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NATIONAL ASSOCIATION  
OF  
RAILWAY COMMISSIONERS  

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PROCEEDINGS  
OF THE  
SEVENTEENTH ANNUAL CONVENTION  
HELD AT  
DEADWOOD AND HOT SPRINGS, SOUTH DAKOTA  
AUGUST 16-19, 1905



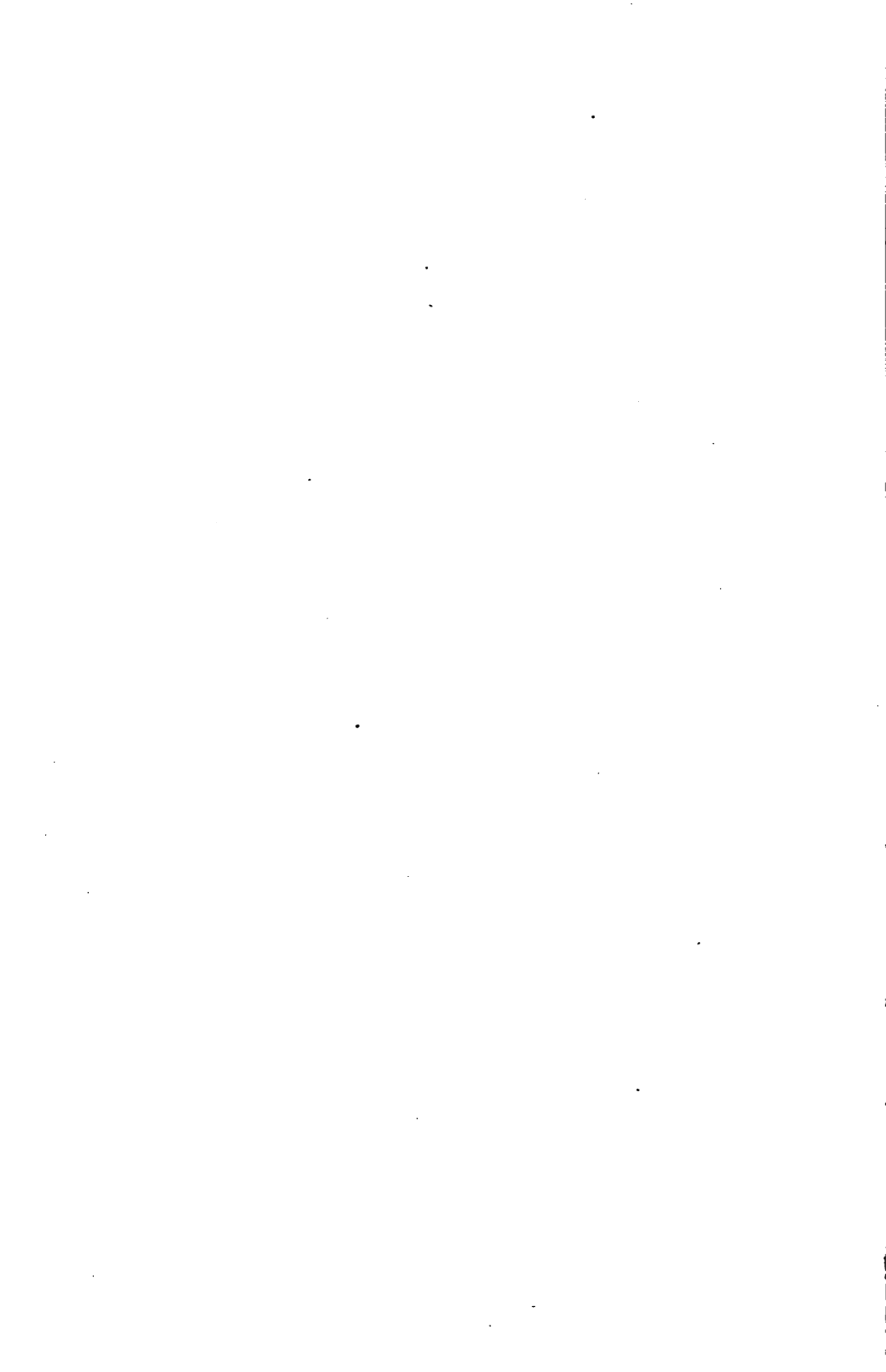
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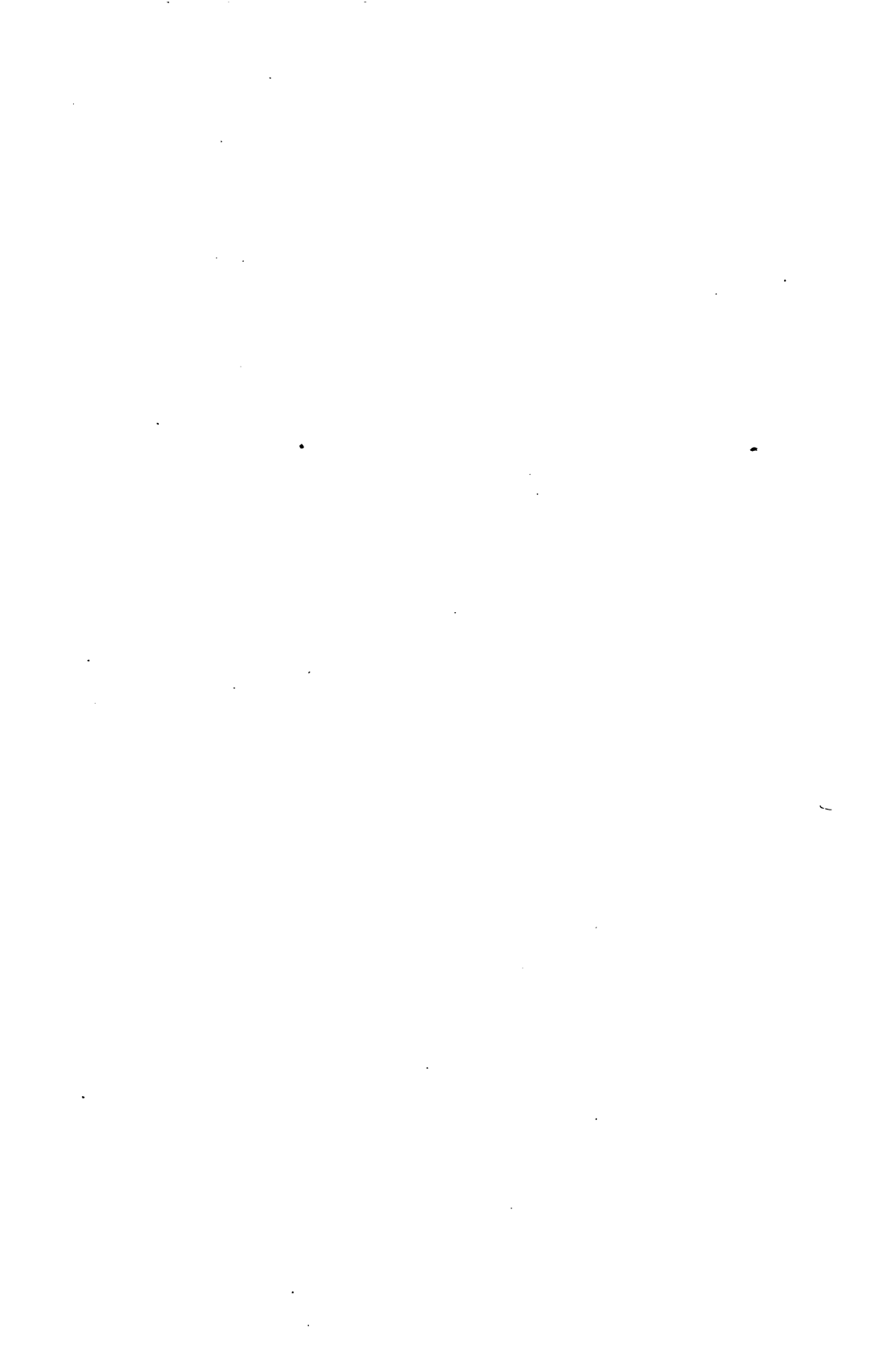
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NATIONAL ASSOCIATION

*of railroad and utilities commissioners,*

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# RAILWAY COMMISSIONERS.

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PROCEEDINGS <sup>CF</sup>

OF THE

SEVENTEENTH ANNUAL CONVENTION,

HELD AT

DEADWOOD AND HOT SPRINGS, S. DAK.,  
AUGUST 16-19, 1905.

WASHINGTON:  
GOVERNMENT PRINTING OFFICE.  
1905.

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## ORGANIZATION OF CONVENTION.

### OFFICERS.

IRA B. MILLS, of Minnesota, *President*.  
JAMES S. NEVILLE, of Illinois, *First Vice-President*.  
W. G. SMITH, of South Dakota, *Second Vice-President*.  
EDWARD A. MOSELEY, *Secretary*.  
MARTIN S. DECKER, *Assistant Secretary*.

### COMMITTEES FOR THIS CONVENTION.

#### EXECUTIVE.

ISAAC B. BROWN, of Pennsylvania.  
JAMES S. NEVILLE, of Illinois.  
W. G. SMITH, of South Dakota.  
FRANKLIN McNEILL, of North Carolina.

HENRY C. STUART, of Virginia.  
IRA B. MILLS, of Minnesota, *ex officio*.  
EDWARD A. MOSELEY, of the Interstate Commerce Commission, *ex officio*.

#### CONSTRUCTION AND OPERATING EXPENSES OF ELECTRIC RAILWAYS.

W. O. SEYMOUR, of Connecticut.  
W. W. MORGARIDGE, of Pennsylvania.  
MARTIN S. DECKER, of the Interstate Commerce Commission.

W. A. HAM, of the District of Columbia.  
A. L. JUDSON, of New York.

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WILLIAM KILPATRICK, of Illinois.  
JOSEPH M. DICKEY, of New York.  
DAVID J. PALMER, of Iowa.

JOSEPH P. RICE, of Missouri.  
CLINTON WHITE, of Massachusetts.  
H. S. BINGHAM, of Vermont.

#### RAILROAD TAXES AND PLANS FOR ASCERTAINING FAIR VALUATION OF RAILROAD PROPERTY.

C. F. STAPLES, of Minnesota.  
J. N. McKENZIE, of Tennessee.  
O. B. COLQUITT, of Texas.  
C. C. McCHORD, of Kentucky.

J. C. MORRIS, of Ohio.  
HENRY FAIRFAX, of Virginia.  
C. L. DE FUENTES, of Louisiana.

#### AMENDMENT OF ACT TO REGULATE COMMERCE.

R. HUDSON BURR, of Florida.  
C. C. McCHORD, of Kentucky.  
FRANK LECOCQ, Jr., of South Dakota.  
CHARLES F. STAPLES, of Minnesota.  
BEVERLY T. CRUMP, of Virginia.

J. H. WHARTON, of South Carolina.  
JOHN W. THOMAS, of Wisconsin.  
JAMES S. NEVILLE, of Illinois.  
B. B. COMER, of Alabama.

#### POWERS, DUTIES, AND WORK OF STATE RAILROAD COMMISSIONS.

FULLER C. SMITH, of Vermont.  
A. C. CLAUSEN, of Minnesota.  
A. C. IRWIN, of California.  
JEFFERSON B. BROWNE, of Florida.

H. WARNER HILL, of Georgia.  
JOHN A. KNOTT, of Missouri.  
VIRGIL C. GRIFFIN, of Alabama.

## RAILROAD STATISTICS.

H. C. ADAMS, of the Interstate Commerce Commission.	C. I. STURGIS, of Illinois.
WILLIAM KILPATRICK, of Illinois.	H. C. KOCHERSPERGER, of Connecticut.
THOMAS YAPP, of Minnesota.	T. W. ATWOOD, of Michigan.
D. N. LEWIS, of Iowa.	

## UNIFORM CLASSIFICATION.

JOHN A. UPSHUR, of Virginia.	D. H. SMITH, of South Dakota.
JOSEPH W. FIFER, of the Interstate Commerce Commission.	J. H. EARLE, of South Carolina.
A. D. WALKER, of Kansas.	B. B. HUDGINS, of Arkansas.
	A. C. ELLWOOD, of Illinois.

## LEGISLATION.

J. C. CLEMENTS, of the Interstate Commerce Commission.	J. C. KINCANNON, of Mississippi.
ALLISON MAYFIELD, of Texas.	J. W. THOMAS, of Wisconsin.
H. WARNER HILL, of Georgia.	ERICK STAFNE, of North Dakota.
ARTHUR G. WHITTEMORE, of New Hampshire.	

## SAFETY APPLIANCES.

EDWARD A. MOSELEY, of the Interstate Commerce Commission.	A. L. FRENCH, of Illinois.
FRANK M. BAKER, of New York.	W. F. WILLCOX, of Connecticut.
GEORGE W. BISHOP, of Massachusetts.	GEORGE E. BALES, of New Hampshire.

## DELAYS ATTENDANT UPON ENFORCING ORDERS OF RAILROAD COMMISSIONS.

WILLIAM E. YOUNG, of Minnesota.	JOHN L. MORGAN, of Florida.
E. C. BEDDINGFIELD, of North Carolina.	FRANK A. WIGHTMAN, of Missouri.
THOMAS L. WILLIAMS, of Tennessee.	JOHN CHRISTIANSEN, of North Dakota.
McD. FERGUSON, of Kentucky.	

## RATES AND RATE MAKING.

B. T. CRUMP, of Virginia.	W. L. FOSTER, of Louisiana.
L. J. STOREY, of Texas.	E. A. DAWSON, of Iowa.
A. T. SILER, of Kentucky.	ORRIN S. HENDERSON, of California.
W. C. TUNSTALL, of Alabama.	

## OFFICERS OF THE ASSOCIATION FOR THE ENSUING YEAR.

W. G. SMITH, of South Dakota, *President*.  
 JOSEPH P. RICE, of Missouri, *First Vice-President*.  
 J. H. WHARTON, of South Carolina, *Second Vice-President*.  
 EDWARD A. MOSELEY, *Secretary*.  
 MARTIN S. DECKER, *Assistant Secretary*.

## COMMITTEES TO REPORT TO THE NEXT CONVENTION.

## EXECUTIVE COMMITTEE.

ISAAC B. BROWN, of Pennsylvania, <i>Chairman</i> .	JOHN S. McMILLAN, of Washington.
JOE P. RICE, of Missouri.	W. G. SMITH (ex officio), of South Dakota.
IRA B. MILLS, of Minnesota.	E. A. MOSELEY (ex officio), of District of Columbia.
J. H. EARLE, of South Carolina.	

CONSTRUCTION AND OPERATING EXPENSES OF ELECTRIC RAILWAYS.

W. W. MORGARIDGE, of Pennsylvania.	MARTIN S. DECKER, of the Interstate Commerce Commission.
W. F. HAM, of District of Columbia.	A. L. JUDSON, of New York.
HENRY M. PUTNEY, of New Hampshire.	ISAAC McQUILKIN, of Indiana.
	J. C. MORRIS, of Ohio.

GRADE CROSSINGS.

FRANKLIN McNEILL, of North Carolina.	UNION B. HUNT, of Indiana.
MARTIN A. KNAPP, of the Interstate Commerce Commission.	FRANK WIGHTMAN, of Missouri.
JAMES S. NEVILLE, of Illinois.	JAMES F. JACKSON, of Massachusetts.
	T. W. ATWOOD, of Michigan.

RAILROAD TAXES AND PLANS FOR ASCERTAINING FAIR VALUATION OF RAILWAY PROPERTY.

ANDREW F. GATES, of Connecticut.	E. L. FREEMAN, of Rhode Island.
JOSEPH W. FIFER, of the Interstate Commerce Commission.	HENRY C. STUART, of Virginia.
J. H. WHARTON, of South Carolina.	JOHN CHRISTIANSEN, of North Dakota.
GEO. W. BISHOP, of Massachusetts.	

AMENDMENT OF ACT TO REGULATE COMMERCE.

H. WARNER HILL, of Georgia.	JOHN S. McMILLIN, of Washington.
ADAM ANDREW, of California.	ISAAC B. BROWN, of Pennsylvania.
FULLER C. SMITH, of Vermont.	A. L. FRENCH, of Illinois.
C. S. DEISEM, of North Dakota.	D. H. SMITH, of South Dakota.
D. J. PALMER, of Iowa.	

POWERS, DUTIES, AND WORK OF STATE RAILWAY COMMISSIONS.

H. A. FAIRCHILD, of Washington.	B. B. COMER, of Alabama.
ORRIN HENDERSON, of California.	W. H. BARROW, of Louisiana.
R. HUDSON BURR, of Florida.	PARKER SPAFFORD, of Maine.
C. C. McCHORD, of Kentucky.	

RAILROAD STATISTICS.

WILLIAM KILPATRICK, of Illinois.	D. N. LEWIS, of Iowa.
H. C. ADAMS, of the Interstate Commerce Commission.	C. C. HAMMOND, of North Dakota.
VIRGIL T. GRIFFIN, of Alabama.	JOSEPH B. PEAKS, of Maine.
	C. I. STURGIS, of Illinois.

UNIFORM CLASSIFICATION.

IRA B. MILLS, of Minnesota.	B. H. MEYERS, of Wisconsin.
J. C. CLEMENTS, of the Interstate Commerce Commission.	JOHN A. KNOTT, of Missouri.
SAMUEL L. ROGERS, of North Carolina.	E. A. STAFNE, of North Dakota.
	S. D. McNAIR, of Mississippi.

LEGISLATION.

O. B. STEVENS, of Georgia.	FRANK BAKER, of New York.
GEO. E. BALES, of New Hampshire.	JOE P. RICE, of Missouri.
A. C. IRWIN, of California.	J. N. McKENZIE, of Tennessee.
B. L. CAUGHMAN, of South Carolina.	

SAFETY APPLIANCES.

FRANK LE COCQ, Jr., of South Dakota.	HALFORD ERICKSON, of Wisconsin.
EDWARD A. MOSELEY, of the Interstate Commerce Commission.	J. W. ROBINSON, of Kansas.
WILLIAM T. YOUNG, of Minnesota.	O. B. COLQUITT, of Texas.
	LEROY GRANT, of Wyoming.

## DELAYS ATTENDANT UPON ENFORCING ORDERS OF RAILROAD COMMISSIONS.

JEFFERSON B. BROWNE, of Florida.  
 CHARLES A. PROUTY, of the Interstate Commerce Commission.  
 CHARLES F. STAPLES, of Minnesota.

C. L. DE FUENTES, of Louisiana.  
 GEORGE T. HOWARD, of Vermont.  
 L. J. STOREY, of Texas.  
 J. F. HAMPTON, of Arkansas.

## RATES AND RATE MAKING.

BEN F. CHADBOURNE, of Maine.  
 FRANCIS M. COCKRELL, of the Interstate Commerce Commission.  
 J. C. LAWRENCE, of Washington.

N. S. KETCHUM, of Iowa.  
 THOS. YAPP, of Minnesota.  
 BEVERLY T. CRUMP, of Virginia.  
 W. O. SEYMOUR, of Connecticut.

(NOTE.—Members of each committee will be expected to address the convention upon the topic considered by the committee.)

*Time and place of holding next convention, April 2, 1906, Washington, D. C.*

## MEMBERS OF THE CONVENTION IN ATTENDANCE.

## STATE RAILROAD COMMISSIONERS.

## ALABAMA:

VIRGIL C. GRIFFIN, *Secretary.*

## CONNECTICUT:

ANDREW F. GATES, *Chairman.*

## FLORIDA:

JEFFERSON B. BROWNE, *Chairman.*

R. HUDSON BURR, *Commissioner.*

## GEORGIA:

H. WARNER HILL, *Commissioner.*

## ILLINOIS:

JAMES S. NEVILLE, *Chairman.*

WM. KILPATRICK, *Secretary.*

## IOWA:

DWIGHT N. LEWIS, *Secretary.*

## KANSAS:

J. W. ROBINSON, *Chairman.*

## MAINE:

BENJ. F. CHADBOURNE, *Commissioner.*

## MINNESOTA:

IRA B. MILLS, *Chairman.*

C. F. STAPLES,

WM. E. YOUNG,

*Commissioners.*

A. C. CLAUSEN, *Secretary.*

THOS. YAPP, *Assistant Secretary and Statistician.*

## MISSOURI:

J. P. RICE, *Chairman.*

## NORTH CAROLINA:

FRANKLIN McNEILL, *Chairman.*

S. L. ROGERS,

E. C. BEDDINGFIELD,

*Commissioners.*

H. C. BROWN, *Clerk.*

## NORTH DAKOTA:

C. S. DEISEM, *Chairman.*

C. C. HAMMOND, *Secretary.*

## PENNSYLVANIA:

ISAAC B. BROWN, *Secretary of Internal Affairs.*

W. W. MORGARIDGE, *Assistant Superintendent Bureau of Railways.*

## SOUTH CAROLINA:

J. H. WHARTON, *Chairman.*

B. L. CAUGHMAN,

J. H. EARLE,

*Commissioners.*

F. H. WESTON, *Secretary.*

## SOUTH DAKOTA:

FRANK LE COCQ, Jr., *Chairman.*

D. H. SMITH,

W. G. SMITH,

*Commissioners.*

W. H. STANLEY, *Secretary.*

## VERMONT:

F. C. SMITH, *Chairman.*

G. T. HOWARD, *Commissioner.*

## WASHINGTON:

H. A. FAIRCHILD, *Chairman.*

J. S. McMILLIN,

J. C. LAWRENCE,

*Commissioners.*

## WISCONSIN:

HALFORD ERICKSON,

J. W. THOMAS,

*Commissioners.*

ORGANIZATION.

7

INTERSTATE COMMERCE COMMISSION.

JUDSON C. CLEMENTS, <i>Commissioner.</i>	WM. H. CONNOLLY, <i>Chief Clerk.</i>
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ASSOCIATION OF AMERICAN RAILWAY ACCOUNTING OFFICERS.

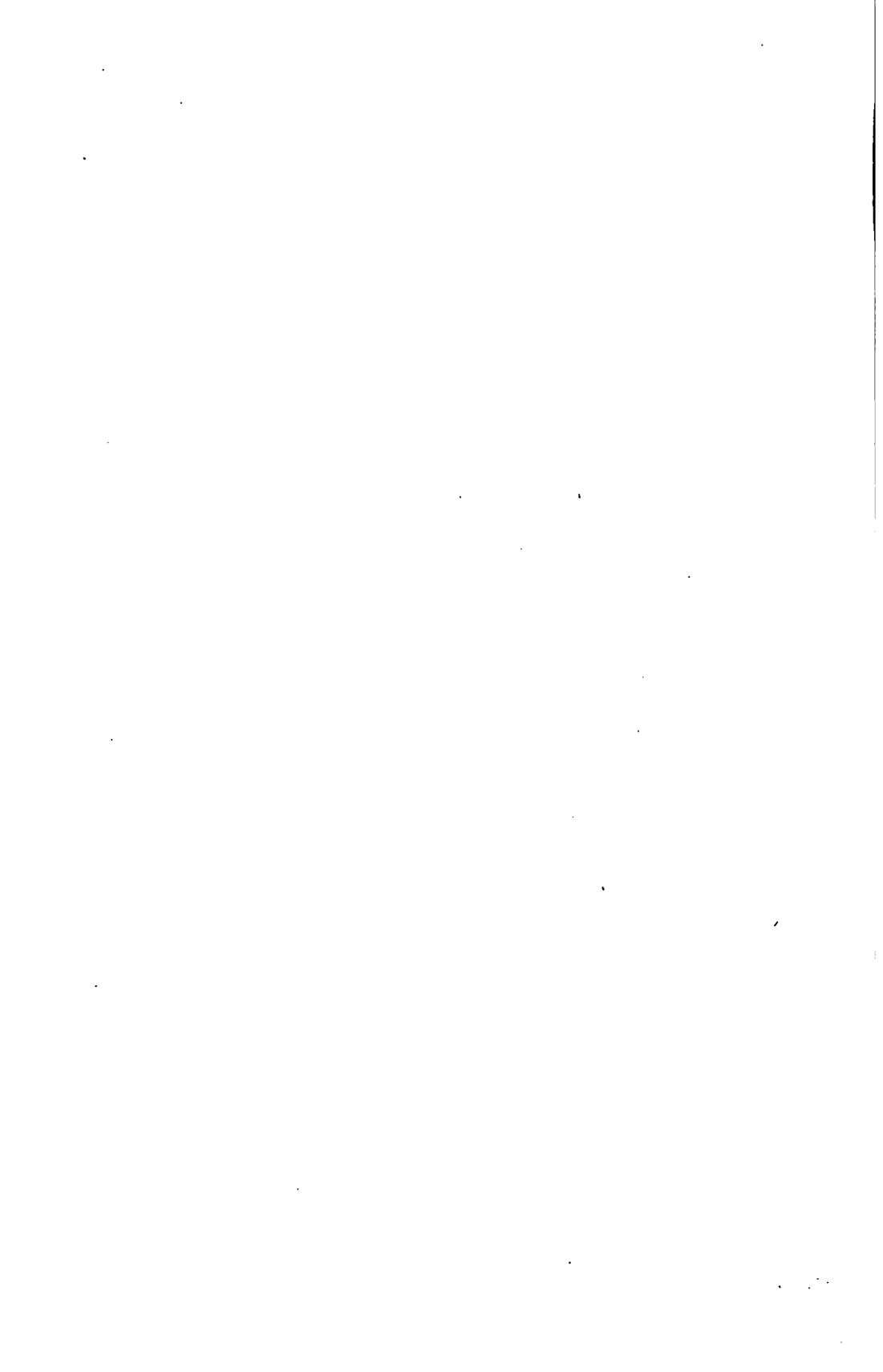
J. O. CLIFFORD.	C. I. STURGIS.
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STREET RAILWAY ACCOUNTING ASSOCIATION OF AMERICA.

W. F. HAM.	ISAAC McQUILKIN.
F. R. HENRY.	

OTHER PERSONS PRESENT.

R. R. LEESE, <i>Secretary Colorado Board of Equalization.</i>	J. W. SCHERR, <i>Chief Clerk Auditor's Office, West Virginia.</i>
EDWARD KEARNEY, <i>Nebraska.</i>	



## PROCEEDINGS OF THE CONVENTION.

DEADWOOD, S. DAK.,  
*August 16, 1905—3 p. m.*

The convention was called to order by Hon. Ira B. Mills, of Minnesota, president.

The PRESIDENT. I have the pleasure of introducing to you Mr. John Treber, the mayor of the city of Deadwood.

### ADDRESS OF WELCOME.

Mr. TREBER. Mr. President and members of the National Association of Railway Commissioners, it gives me the greatest pleasure to greet you here to-day, and I extend to you the most hearty welcome of the city of Deadwood. It is not necessary for me to hand you the key of our city, inasmuch as our houses and our homes are open to you.

I have been requested to state that the Deadwood Business Club will be pleased to have you make yourselves at home in their parlors and make use of the conveniences of the club. The Olympic Club, also of this city, extends to you the same cordial invitation. At 8.30 this evening our citizens wish to tender you an informal reception, concert and ball at the Hotel Franklin.

To-morrow we notice your sessions will be held in our sister city of Lead. We know that you will be royally entertained there, and have the opportunity to visit the greatest gold mine in the world; nevertheless, remember it is our wish for you to make our city your home while in the Black Hills.

On Friday morning an excursion has been arranged to take you, over mountain ranges and through the grand and magnificent canyon of the Spearfish River, to the beautiful city of Spearfish. I feel and am sure you will enjoy this trip, for there is no grander scenery on this continent.

It is more than pleasing to me to have the honor of introducing to you the Hon. Samuel H. Elrod, the governor of our state. [Applause.]

### ADDRESS OF GOVERNOR ELROD.

Mr. ELROD. It is a great pleasure to welcome you, coming from all the states, to this young commonwealth, and especially to this most novel and interesting city. We laid the corner stone of this young



state yonder at the mouth of the Vermilion River by building a log schoolhouse just forty years ago. Within a half mile of where the log schoolhouse was built stands the splendid state university. So you see that the education of the youth of our state was the first in importance. We started right and we maintain that the social, moral and business interests of the state have gone along hand in hand.

For a moment look over our 76,000 square miles of territory. The southeastern part of the state is unsurpassed anywhere in the Union as a cattle and hog country. The northeastern part, a little newer but equally as productive, produces wheat, barley, flax, oats, and dairy products that are unsurpassed. The Missouri Valley country, the home of the buffalo, the grandest pasture land known anywhere, produces cattle, sheep and horses, and is underlaid with a great artesian and gas basin.

In the palmy days of the American Desert the Missouri Valley was a great pasture. Lewis and Clark say as they descended the Missouri River in August, 1806, as they passed the entrance of the White River, that they found the buffalo "so numerous that from an eminence we discovered more than we had ever seen before at one time; and if it be not impossible to calculate the moving multitude, which darkened the whole plains, we are convinced that 20,000 would be no exaggerated number."

To the north of us lies Butte County, a county larger than the states of Rhode Island, Delaware, and Connecticut combined. It is destined to become an empire in itself. The Government is now expending \$2,100,000 for irrigation purposes in this part of the state, and there is little doubt but what all of the country lying in the north-western part of the state is underlaid with great, immense and invaluable beds of coal. And to the east of us, between here and the capitol yonder, at Pierre, lies the county of Stanley, with its thousand grassy hills and fattening herds, greater in area than the state of New Jersey.

Would that I could borrow the tongue and words of Benjamin Franklin, that I might adequately describe the Black Hills.

Scientists tell us that ten of the geologic ages are here exposed to the scrutiny of humanity's investigation, and but two of the universal organic elements are lacking. Nowhere else on the globe has nature gathered into one place so complete a collection of her wonders and curios as in this the greatest of earth's curiosity shops.

You will never forget these scenes, and we ask you to remember that more than \$150,000,000 of gold has been extracted from these hills, and the indications are that the hidden gold is well-nigh inexhaustible. We ask you to remember that which is of greater importance—the citizenship of its people is of the highest order.

Year after year South Dakota has produced more wealth per

capita than any other state in the Union. No other state has fewer idle people. No other state is more economically managed. County after county is entirely out of debt. The state itself is well nigh out of debt and with prudent and careful management it will be entirely out of debt within a short time. To be exact, the total indebtedness of the state is just \$637,000—\$237,000 of it is bonded indebtedness, and there is in the sinking fund to meet these bonds, \$2,000,000; \$400,000 of it is outstanding warrants. Under a law passed last winter to insure more equal assessment, and which law is in effect for the first time, there is every indication that the present assessment will produce a greater revenue than any former assessment. Under its operation property that has never gone on the assessment rolls before is now listed. The result is that the burden hitherto borne by the few is to be borne by the many and the per capita tax of the individual will be less.

The railroad question is the question of the day and you are the servants of the people. In my address to the legislature in January I used the following language:

Railroads are public servants and should serve the people well and reasonably. They should be managed with due regard to the interests of the people. The state should treat them fairly and they, in return, should respect the wishes and rights of the people. If existing laws are not adequate to protect the rights of the people, laws that are such should be enacted.

The first line of railroad was built in the state from Sioux City to Yankton in the year 1872. From that time until the present time the railway mileage of the state has been increasing from year to year until the state has now 3,048 miles of railroad. It has long been the dream of the people of the Black Hills and the people who live east of the Missouri River, that the two parts of the state might be united by direct railway communication. Year after year has come and gone and still no roads. But all things come to those who wait. On the 4th day of July a locomotive crossed the Missouri River for the first time in South Dakota and it is daily getting closer and closer to this land of gold. It is only a question of time until the Milwaukee and Northwestern roads will have united the Hills and the eastern part of the state. The fields and farms of the eastern part of the state produce all the necessities required by those who toil in the mines. Once these two parts of the state are united, watch the state grow and develop. A great deal has been said and is being said upon the subject. I am not an alarmist or a reformer or a pessimist, but on the other hand believe that what is best for the development of mankind and for the growth and development of the states and the nation will in the end result.

The American people have implicit confidence in our President.

They have elected Congress after Congress according to the Constitution framed by the fathers. The President will do his part, the Congress will do its part, and when the grist is milled out it will be the will of the common people, the people that Lincoln knew and loved so well.

What the people want is the lowest reasonable rates. They want the private-car nuisance cut out, they want rebates and discriminations cut out. Local discriminations are especially aggravating and hard to regulate. You can handle such discriminations better than anyone else. If there is no law that can be applied, then you can correct the evil by persistent personal effort, being careful to use good tact all the while. It may take weeks, months, even years, but you will win in the end if you are in the right. They want better accommodations. They want the railroads to pay their just and equitable share of taxes. You can help mightily in bringing these things about.

No state in the Union has truer or more faithful Senators and Congressmen than this state. Their every act has been and will be for the best interests of all the people of this state. The Congressman from this city is as able, clear-headed, and as fearless as Roosevelt or Root, and no corporation or combination of corporations could induce him or either of his colleagues from this state to vote for any measure that would be against the interests of the people of this state. What is true of the integrity and ability of the Senators and Congressmen of this state in the main applies to all the states.

The greatest danger that confronts the American people to-day is the cry of the so-called "reformers," the demagogues, the grafters, and the gamblers of Wall street; each perhaps unintentionally aids the other. We read in the yellow journals that the whole world is alarmed over the transportation question. The railroads do many things they should not do. They, in many cases, charge unreasonable rates, encourage private-car lines, and violate state and national statutes, and discriminate in favor of large concerns, which in many instances drive the small shipper out of business. Many wrongs of railroads are righted daily by you, and I urge you to be more diligent in the performance of your duties in the future than you have been in the past. You speak for the people. If the railroads do not comply with the statutes, in many instances you have the power to compel them to comply. Treat the railroads fairly; see that they treat the people fairly.

Notwithstanding the evils mentioned and the shortcomings of the railroads, the country has been growing and developing right along, and the railroads have been a mighty power in building up the country, especially the great Mississippi Valley and the great Northwest—in connecting this great valley with the Atlantic Ocean on the

east and the Pacific Ocean on the west. It is only a little while ago that the National Government gave many thousand acres of land to encourage the building of the Union Pacific road and to encourage the building of the Northern Pacific road. Vast as was the number of acres given away, the country traversed was useless without the roads.

The Lewis and Clark expedition was the forerunner of the railroads, which in the last half century have revolutionized and transformed the West and the Northwest. The present active expansion of our oriental commerce, which is yet in its infancy, was rendered possible by the railroads. The railroads have been the principal factor in the development of our trade relations with the orient, and what the future has in store no man has the power to correctly prophesy.

There is ground for complaint and room for improvement, but there is no denying that the rates in force—and they have been growing less each year as business has increased and settlements thickened—have made the Middle West.

The farmers and the business men of the Missouri and Mississippi valleys know that long-haul rates have done more to develop the country than any other one thing. They know the rates they have enjoyed are very much lower than anywhere else in the world, taking distances into consideration.

If the rates that the reformers are clamoring for had been in vogue for the past forty years the development of the country would be 50 per cent less than what it is. There is too much of theory in their contentions and too little of facts.

Rebates and discriminations are punishable offenses under existing statutes. What is needed more than more law is the enforcement of the laws now on the statute books.

In a word, if prosecutors—county, state, and national—would wake up and enforce the laws now on the statute books there would not be anything left for the fault-finders to grumble about. The prosecutor, when a corporation is indicted, should bring the offending officer of the corporation into court and arraign him the same as a criminal who steals a cow or a horse. If prosecutors, jurors, judges, railroad commissioners and governors did their full duty there would be little ground for complaint.

Too often when convictions are secured courts are too easy or the punishment too light. Fortunately this is not always the case. Once I prosecuted a man for stealing a cow. When the court came to pass sentence he gave the defendant a nice talk and wound up by saying: "I propose to do what I can to stop cow stealing in this state. You are sentenced to the penitentiary for four years." It is needless to say that there has been no cattle stealing in that part of the state since.

A banker who is a cool-headed, willful criminal gets ten years, the

limit. In this case the law is too easy. However, the country approved the sentence pronounced on the willful criminal who gambled with the savings of a confiding public. It is the hope of these moments that some time the legislatures will get down and amend existing laws, so that when a state treasurer defaults and disgraces himself, his friends, and his state, and when a great banker so forgets the trust confided in him that he becomes a common gambler, they may be imprisoned at hard labor for the rest of their days.

Prosecutors are not paid even reasonable compensation for their services. This applies to county, state, and national prosecutors. The salaries of all prosecutors and attorneys-general should be increased. Then the most skilled and competent attorneys would seek those positions and the results would be more satisfactory to the public. The wonder is that the wolves do not get us, so unconcerned is the average man in regard to the enforcement of the laws. The prosecutor is the greatest protection the public has. Nothing but patriotism and the fidelity to the oath he takes when he enters his office sustains him in his arduous duties. The courts do their work grandly, nobly and patriotically year after year, and in most cases they are inadequately paid. Would that I could command the words that I might pay a fitting tribute to the fidelity of our courts. The honest, competent probate judge, day after day and year after year, sits at his desk protecting the estates of the widow and the orphan from the grafters and the sharks and the hypocrites. The circuit judge tries jury cases all day long and chamber cases far into the night. The supreme judges are covered up with cases, and they grind until they are carried to their last resting place. Then and not until then does the public know their value and their worth. After it is all over, after the last sad rites have been said, friends many times are compelled to carry a subscription paper around asking aid for the sorrowing widow, because the salary paid the late judge was barely sufficient to meet their daily needs.

From the time when the fathers of this republic gave us the Constitution, from Chief Justice Marshall to Chief Justice Fuller, that great office has been most ably filled, and the same may be in a large measure said of all the judges in all our courts. The judicial system of our country is well-nigh beyond criticism, so faithfully and so well do the judges of our courts do their work.

So it is your duty to compel railroads to comply with the laws. The people expect you to enforce the laws. The prosecutors are equipped and ready to help you and the courts will deal out equity.

Without the railroads the great stretch of country from the Gulf of Mexico to the headwaters of the Mississippi and up and over the Rocky Mountains and down to the western ocean would still be a wilderness and a desert.

This Union is a great family of states; in many ways much alike, yet each differs from the other. Each has grown and developed. Some have prospered more than others. Some have endured hardships that have not been inflicted upon others. Yet each is a bright star in the blue field of the flag that Washington designed.

The railroads have done much to bind the states together and to develop them. To illustrate: Less than sixty years ago there was not a mile of railroad in the state of Iowa. To-day steel rails bind and gird it in every part, and they are being honeycombed by the industry and thrift and development of the happiest people on earth. Look at the picture; see the happy homes surrounded by handsome groves, the wavy fields of grain and corn, the herds of cattle and trains of hogs, the bustling villages and the growing, hustling cities, the schools, colleges, universities, and the churches where the people worship. The picture would not be there but for the railroads, and the rates have been lowered again and again, perhaps not fast enough, but where is there a better illustration of civilization? Still there are those who grumble and find fault. After all, is it any wonder, having the transportation facilities that Iowa has, that her people live so well and have more money in banks per capita than any other state in the Union?

The pessimists and the self-styled reformers will continue to talk. Meanwhile the great American people, the people that Lincoln loved so well, will quietly settle this transportation question when they go to the ballot boxes. The people will elect from their numbers Congressmen and Senators who will faithfully carry out their wishes, just as Congresses have been carrying out public sentiment in all the years of the republic.

I do not believe that the truly representative character of our government is in greater peril than at any time before in the history of this country. This country is not on the verge of moral and political ruin, but is making grand strides forward for the good of all men. The people will settle this rate question right, and every other great and important question right, and the Union of the fathers will grow stronger and stronger as the years come and go.

The homes of our people are the best, and they are supplied with both the necessities and the comforts of life as never before. This is especially so of those who live in the rural and farming districts and in the villages and smaller cities.

We are proud of our state; you are proud of your respective states. We are unitedly proud of our country. It will grow stronger and stronger if we are true to the Constitution and to the will of the people.

We South Dakotans think there is no state in the Union quite the equal of the Sunshine State. Our bread and butter, our pota-

toes and meat are unsurpassed. Our homes are all that the word implies; our citizenship is cosmopolitan; hospitality and good cheer abound on every hand. We take special pride in our schools; our common schools are unsurpassed. There are now in the present school fund \$4,661,834.77, and there are yet 1,903,824 acres of school lands unsold. The commissioner of school and public lands distributed \$318,053.23 among the schools of the State for the six months ending June 30. This large sum was for interest and rentals. No part of the permanent school fund can ever be used. With honest business methods in vogue and economical administration taxes will become lower and lower each year.

Would that Jefferson could see the great development that the people of the Louisiana Purchase states have worked in a hundred years. After all, perhaps he does. The future life is so completely veiled that we know not what it is; it is immaterial. We know that nothing that is good is lost. The snows of a few weeks ago are not lost, they are in the grass and grain, in the sap and growth of the tree, in the bloom and fragrance of the flowers, and in the grandeur and sweetness of the lilies of the valley. [Applause.]

The PRESIDENT. The secretary will now read the official call.

CALL FOR SEVENTEENTH ANNUAL CONVENTION OF NATIONAL ASSOCIATION OF RAILWAY COMMISSIONERS.

By authority of the sixteenth annual convention of the National Association of Railway Commissioners, held November 15-17, 1904, at Birmingham, Ala., and pursuant to vote thereof fixing the time and place for the next annual meeting, notice is hereby given that the seventeenth annual convention of the association will be held in the city of Deadwood, S. Dak., on Wednesday, August 16, 1905, 11 o'clock a. m.

Membership in the association is fixed and the privileges of members are determined by article 2 of the constitution, as follows:

Active membership shall embrace only the Interstate Commerce Commissioners, the railway commissioners or deputy commissioners of the several States and Territories of the Union, and in those States and Territories having no railway commissions, State officers who by law exercise active supervisory powers over the affairs of railways; also, the secretary and assistant secretary of the Interstate Commerce Commission, and the secretary or clerk of each State railway commission where such office is created by law.

Honorary membership shall include former members of the association, a committee of three from each steam or street railway accounting association, the statistician of the Interstate Commerce Commission and of the several State commissions, together with the engineers of said commissions.

Active members shall be entitled to one vote each, if present, upon all questions coming before the association. Honorary members shall have the privileges of the floor and the right of debate, but shall not be entitled to vote.

Committees have been appointed to consider and report to the next convention on the following subjects:

1. Classification of operating and construction expenses of electric railways.
2. Grade crossings.

3. Railway taxes and plans for ascertaining fair valuation of railway property.
4. Amendments of act to regulate commerce.
5. Uniform classification and simplification of tariff sheets.
6. Railway statistics.
7. Legislation.
8. Safety appliances and block signals.
9. Delays attendant upon enforcing orders of railway commissions.
10. Rates and rate making.
11. Powers, duties, and work of State railway commissions.

Committees are required to prepare and transmit their respective reports to the secretary thirty days before the date of the next convention. The committee reports should be sent to the secretary as soon as possible.

It is earnestly desired that all members shall attend this convention, as questions of unusual importance are likely to be brought up for discussion. Each member should come prepared not only to discuss the topics above mentioned, but to present additional matters pertaining to railway regulation for consideration by the convention.

IRA B. MILLS,  
*Of Minnesota, President.*

EDW. A. MOSELEY,  
*Secretary Interstate Commerce Commission, Secretary.*

WASHINGTON, D. C., June 17, 1905.

- Mr. KILPATRICK, of Illinois. As we are furnished with a copy of the call, I move that the reading of the call be dispensed with.

The motion was carried.

The PRESIDENT. The acting secretary will please call the roll by states.

#### ROLL CALL BY STATES.

*Alabama.*—Virgil C. Griffin, secretary.

*Connecticut.*—Andrew F. Gates.

*Florida.*—J. B. Browne, R. H. Burr.

*Georgia.*—H. Warner Hill.

*Illinois.*—J. S. Neville; Wm. Kilpatrick, secretary.

*Iowa.*—N. S. Ketchum; D. N. Lewis, secretary.

*Kansas.*—J. W. Robinson.

*Maine.*—B. F. Chadbourne.

*Minnesota.*—I. B. Mills, C. F. Staples, W. E. Young; A. C. Clausen, secretary; Thos. Yapp, assistant secretary and statistician.

*Missouri.*—J. P. Rice.

*North Carolina.*—Franklin McNeill, S. L. Rogers, E. C. Beddingfield; H. C. Brown, clerk.

*North Dakota.*—C. S. Deisem; C. C. Hammond, secretary.

*Pennsylvania.*—I. B. Brown, W. W. Morgaridge.

*South Carolina.*—J. H. Wharton, B. L. Caughman, J. H. Earle; F. H. Weston, secretary.



*South Dakota.*—F. Le Cocq, jr., D. H. Smith, W. G. Smith; W. H. Stanley, secretary.

*Vermont.*—F. C. Smith, G. T. Howard.

*Washington.*—H. A. Fairchild, J. S. McMillin, J. C. Lawrence.

*Wisconsin.*—Halford Erickson, J. W. Thomas.

*Interstate Commerce Commission.*—J. C. Clements; W. H. Conolly, chief clerk.

*Association of American Railway Accounting Officers.*—J. O. Clifford, C. I. Sturgis.

*Street Railway Accounting Association of America.*—W. F. Ham, F. R. Henry, Isaac McQuilkin.

*Other persons present.*—R. R. Leese, secretary Colorado board of equalization; Edward Kearney, Nebraska; J. W. Scherr, chief clerk auditor's office, West Virginia.

Mr. BROWN, of Pennsylvania. If you will permit me, I would like to say that there is one man connected with this organization who has done a very great deal of hard work to insure the success which I believe will attend this meeting. I refer to Dr. W. G. Smith, a railroad commissioner from the state of South Dakota. I know he would be glad to say a word at this time, and I am sure you will be glad to hear him.

#### ADDRESS OF DR. W. G. SMITH.

Mr. W. G. SMITH, of South Dakota. Mr. President, it is truly a pleasure to our people to have this National Association of Railway Commissioners meet in their seventeenth annual convention in South Dakota, and especially in the Black Hills part of our grand young state. For right here, gentlemen, you are now in "the richest hundred miles square on earth." In this hundred miles square is contained the great mineral wealth of South Dakota, making her the third state in the Union in the production of the money metals.

South Dakota is less than 20 years old, and we do not boast of the great population in the southwestern part of our state, known as the Black Hills, but we do boast of a thorough and united effort of the few, by which great results have been accomplished. We of the Black Hills all touch elbows and pull together, and you can see and note results.

While here you will have the pleasure of seeing in operation the great Homestake mine, the greatest gold mine in the world, which is to-day and is every day in the year taking thousands of tons of ore from the bowels of the earth, crushing the same to fine powder by the falling of the thousand stamps and extracting the gold therefrom by the amalgamation and cyanide processes. The Homestake mine has not been in operation many years, but has paid more than \$23,000,000 in dividends, and the monthly and semimonthly divi-

dends are as regular as the rising and setting of the sun. While the Homestake mine heads the list as a producer, there are many other producing mines in this hundred miles square. And yet the Black Hills mines are in their infancy of development. Look at the reports of the wealth produced by these mines and you will see that the increase over each previous year amounts to nearly \$1,000,000.

South Dakota, gentlemen, is the Sunshine State of the Union. Don't take my word for it, but look up the Weather Bureau signal reports, one year with another. And what I have said of South Dakota's sunshine applies to the people of South Dakota, including the Black Hills, for, in fact, we always in our hearts have sunshine for our friends, which includes every member and guest of this association.

As a member of this association for the past seven years I have been meeting with you annually, and I want to say at this time that the railroad commission of South Dakota, the citizens of Deadwood and Lead, the Black Hills, and the state of South Dakota all feel highly complimented by your presence here at this time, and appreciate your coming here by a unanimous vote at your last convention. Many of our distinguished citizens from eastern South Dakota have traveled several hundred miles to assist in making your stay in the Black Hills a pleasant one. Our state is, as you know, one of magnificent distances. All our people feel greatly honored by having this association, representing so many states, from all sections of our country, among us, and only wish that your stay might be longer, so that we could become better acquainted with you and talk with you about your travels in the various parts of our country and hear from you the glowing description of our great country, with its wonderful productiveness in the various industries which help to make this the greatest producing nation on earth.

You have in your travels in attending your annual conventions seen the great Northwest, abounding with its beautiful farms and heavily timbered forests, from which South Dakota, through the transportation companies, derives much of her supply of lumber and heavy timbers for construction purposes; you have viewed the many varied industries of the Pacific coast and enjoyed the hospitalities of the ever-hospitable Western people; you have enjoyed seeing the great "wonderland" of the East and Northeast, and well remember the great forests of Maine and the New England States, where our big-hearted brother, Ben Chadbourne, of Maine, pointed out the fact that millions of feet of their forests were being converted annually into pulp and paper and exported out of the state for use in journalism and for trade purposes, and no doubt there wells up in your memory a vivid remembrance of the many hospitalities at our Portland session, while others of our members will recall our very pleasant

trip to the beautiful city of Milwaukee, of our trip to Denver, and the trip over the scenic route of the Denver and Rio Grande Railway, while many will carry everlasting mental pictures of our southern trip through South Carolina, Florida, Alabama, Louisiana, and to the City of Mexico.

We want, before closing, to refer again to "Opportunityville," the name given to South Dakota by Collier's Weekly, which goes on to speak of South Dakota, with her go-ahead spirit, the state of fair play, good roads, good farms, good homes, and good schools, and also calls attention to the fact that the center of gravity of the agricultural world is in South Dakota.

The educational interests of South Dakota are well guarded, the National Government having donated to the educational institutions of South Dakota over 2,000,000 acres of public land when our state was admitted into the Union, and decreed that not an acre should be sold for less than \$10. Three hundred thousand acres have been sold at an average of \$20 per acre, and over 1,000,000 acres are under lease at the present time. When all of this land has been sold, local taxation for school purposes will be a thing of the past, for the income for education this year is over \$400,000 from this endowment fund.

As you will see but a very small part of South Dakota, the southwest corner of our state, I desire to tell you of some of the good things that our state can and does feel proud of. My figures are largely taken from our state historian. South Dakota has two of the largest apple orchards in America. One near Parker, in the eastern part of our state, which is 22 years old, and bore 22,000 bushels of fine apples last year, and the other near Rapid City, in the Black Hills, and is equally prolific.

South Dakota has a wonderful artesian basin, extending clear across the state. At the present time nearly 4,000 artesian wells are in active work of supplying water for agricultural and domestic purposes, while some are used to furnish power in manufacturing establishments. This artesian basin seems inexhaustible, as the wells afford abundance of water under high pressure and are capable of affording power for many purposes. A 1½-inch well will supply water for a section of land and costs from \$100 to \$500.

We have a natural-gas belt 50 by 150 miles in area at a depth of 1,400 feet.

When you visit Spearfish over the wonderful scenic route, we take you to Bald Mountain, where you can look into the territory of five states—Nebraska, Wyoming, Montana, North and South Dakota. And this is really the Lookout Mountain of South Dakota. As you look toward these states you see the "world's greatest pasture," where sheep, cattle, and horses graze the year around without grain, hay,

or shelter. These animals are used to the Dakota blizzards that you have read so much about. This great pasture will in the near future furnish free homes for several hundred thousand people. A Government drawing would advertise and settle it quickly, but the railroads will settle the land more permanently as they span these states going westward.

South Dakota's stock industry in 1903 was valued at \$36,000,000, with a per capita stock value of \$160, and its closest rival was Iowa, with a per capita of \$122. Our poultry and egg industry amounted to \$5,000,000, and our dairy products to \$7,000,000. South Dakota's oat crop last year was 33,500,000 bushels, her corn crop 53,500,000 bushels, and the usual wheat crop is about 50,000,000 bushels, which will be largely increased this year. We regret that time only prevents us from showing you not only the valleys at the foot of those Hills, where the wheat was raised that took first and second medals at the World's Fair in Chicago, but the beautiful valleys of the Jim and Sioux, in eastern South Dakota, with their fields of waving wheat and yellow corn, unsurpassed anywhere in this broad land of ours.

South Dakota has led the states in the production of new wealth per capita every year since 1895, and our per capita last year was \$242.56. The deposits in the banks of Deadwood and Lead show how the people of the Black Hills do business. The total population of these two towns combined is a little over 12,000, with \$2,600,000 on deposit, while the deposits of Lead alone average \$210 for every man, woman and child.

Gentlemen, we again thank you for your coming among us, wish that you might make your stay longer and heartily invite you to come again.

[Applause.]

#### ADDRESS OF PRESIDENT IRA B. MILLS.

The PRESIDENT. I am glad to meet you in this Seventeenth Annual Convention of the National Association of Railroad Commissioners. The first convention I had the honor of attending was in May, 1893. Only eleven that attended that convention are now in office, but year by year the convention grows in strength and influence.<sup>a</sup> The knowledge we gain by discussion of the subjects that come before the convention and from association with one another is of great value in the discharge of our duties at home.

During the last year there has been deep interest manifested by all classes of citizens in state and federal regulation of carriers, how far such regulation should extend, and what powers should

<sup>a</sup> Mr. Chadbourne and Mr. Brown are the only two commissioners present who were in attendance in May, 1893.

be given to federal and state authorities. There is no question before the American people to-day that is of so much importance or that needs more careful and conservative consideration. Transportation lies at the very foundation of all business. Stop the wheels of the carrier and in a very short time you will paralyze the industries of the nation. I feel that it is the duty of every citizen who has given this subject a careful consideration to give the benefit of such knowledge as he may have acquired and his opinion on these questions to aid in their solution, and I approach what I have to say with a full appreciation of the fact that although there are a number of men who have made large fortunes out of railroads and still have them invested in railroad securities, the bulk of the railroad stocks and bonds of America are owned by people of small means—by institutions which are intrusted by the common people with their earnings, such as savings banks, trust and insurance companies.

I have faith enough in our form of government to believe that there will never be a commission appointed by an Executive elected by the American people that would recommend a rate that would endanger an adequate return on the fair value of the railroad properties. The people are not hostile to the railroads. On the contrary, they are friendly and will never consent to their being deprived of a just return on a just valuation nor to a rate that will not allow the payment of good wages to the employees. They believe that both capital and labor are worthy of their hire.

The right of Congress, by direct act or by a commission, to fix a reasonable rate for the future is no longer disputed, but the question of how far this power should be exercised is still open to debate.

The Interstate Commerce Commission, under the act to regulate commerce, now has the power, when the reasonableness of a rate is challenged by complaint, to determine, after hearing, whether it is reasonable, and if it is found that it is unreasonable, to order that it be discontinued; but it has no power to determine what will be a reasonable rate for the future and compel the carrier to adopt it. The authority of the Commission ends when it has ordered the discontinuance of the rate found to be unreasonable. Should it be given the power to find what is a reasonable rate in the future and order the carrier to substitute such rate for the one found to be unreasonable, subject to the right of the carrier to review the decision of the Commission in the federal courts? This is the main question under discussion by Congress. It is not a new question with this convention. This association has recommended such legislation at its annual meetings ever since the year 1886, and in my opinion it ought not to take a backward step at this meeting. In discussing the question it is necessary to determine what both the public and the carrier are entitled to. The shipper should have a reasonable and stable rate, open to all,

without any unreasonable or unequal discrimination between persons or localities or different classes of freight.

The railroad company is entitled to a reasonable return upon its property after paying expenses of operation; the expense of keeping it in first-class repair and replacing it as it wears out and making such additions and betterments as are necessary for the successful and judicious management of the property. Any body of rates that will not produce sufficient revenue to allow the carrier such returns violates the constitutional rights of the owners of the railroad by depriving them of their property without due process of law, and would be restrained by the courts. The question of making a rate for the future is a legislative and not a judicial function. The courts can not fix what a future rate shall be, but may say that a rate fixed under legislative authority is unreasonably low. That is a judicial question. The only tribunal before which the question of the reasonableness of a future rate can be tried is Congress itself, or some tribunal to which it delegates its legislative prerogative to fix a reasonable rate.

All that the people are demanding is the right to a fair and impartial trial before some tribunal of what their rates shall be, and to have the decision of that tribunal made effective after it has been considered and affirmed by the highest court in the land.

But we are told that the question is too complicated to be left to a commission—that the rights of the people are safe in the hands of the experienced traffic managers; that it is to the interest of the carrier that rates on its line of road are just and reasonable. I believe that almost all of the men in charge of the traffic in this country intend to make a just and reasonable rate, but their first allegiance is to the company that employs them, and whenever the question of the interest of the public and that of the company is in the balance, duty to the company naturally compels them to give it first consideration. In the past these gentlemen have gone so far in the discharge of what they thought their duty to the property they were managing as to lead them to a violation of the law of the land in giving rebates which allowed certain business concerns such advantages that they were enabled to drive what they chose to call the "small fry" out of business. But it is not the purpose to throw aside the experience and wisdom of these gentlemen, but, rather, to utilize it in determining the questions that come before the Commission. They will all be given an opportunity to be heard, and their reasons for the rates they are maintaining carefully considered. A false issue is being made by the opposition to this legislation by trying to instill in the public mind that it is proposed to give the Interstate Commerce Commission power to arbitrarily fix rates without a right of appeal or review by the courts. No such proposition has ever been made, and Congress can not grant any such power.

The right to try and have the Commission condemn an existing rate, or the right to recover back the excess of an unreasonable rate in the courts, does not afford relief to the consumer—the man who really pays the freight; the right of action is not in him, but in the merchant—wholesale or retail—to whom or by whom the goods were shipped; the freight has been added to the price of the goods and the consumer has paid it. He is entirely without a remedy, while, if the Commission makes a mistake the carrier has the right to have it corrected by the court before it goes into effect; for, even if Congress should provide that the rate made by the Commission go into effect at once, the courts would enjoin its enforcement on a *prima facie* showing by the carrier that it was unreasonably low until the question could be judicially determined.

It is said that rates in this country are now reasonable—lower than any country in the world. Now, this may be so; but we would not think of abolishing our criminal laws if, for a time, there was no crime; nor our laws for the enforcement of civil rights if, for a long time, there was no necessity of an appeal to the courts to enforce them. They would be maintained on the statute books to be used when needed. All the rates taken together may be reasonable, yet there may be cases where they are not; or the burden may not be properly divided between the different classes of freight. The question now under discussion in Congress is not whether the rates are reasonable, but whether there shall be a tribunal where the question of the reasonableness of the rate can be tried, and if found unreasonable a reasonable rate fixed for the future. The right to another review of its order fixing a rate by the Commission would always exist, so that no injustice would be done the carrier under a change of conditions.

This power has existed under the Minnesota laws since 1887, and has been exercised by the Commission in many instances; and in most cases which have been commenced under it rates have been adjusted satisfactorily to all parties concerned. I have yet to hear that an order has been made that has been deemed confiscatory or in any way oppressive to the carrier. There is no reason why a federal statute should not work as well as that of a state.

The federal law should also require a carrier to make a joint rate and the jurisdiction of the Commission should extend to such joint rates, but a carrier should not be required to make a joint rate with another carrier to a point reached by its own line.

It would be advisable for Congress in a general way to point out what different conditions and circumstances should authorize the abrogation of the long and short haul clauses. As now interpreted in a great many instances it works an injustice.

For a more effectual administration of the laws, the Commission should be given authority to examine into all the accounts of the car-

riers, with the right to inspect all their books and vouchers, and inquire into the purpose of all their expenditures. Had such power existed before and been exercised, the unjust privileges in the way of rebates and other special favors that existed for a long time would have been exposed and prevented.

If one stops to consider the condition of things prior to the passage of the act to regulate commerce, when the general manager operated his road as a private enterprise, charged whatever rate he chose, and different rates to different persons, and built up one town at the expense of another, made one man rich and another poor, all doubts that great benefits have inured to the country from the law and its administration will be removed; but like many other pioneer laws, it can be improved; and I here take the liberty to make some suggestions along that line, realizing that there may be many well-founded objections to my plan, and only hoping to cause discussion, which I believe may result in giving the country a more perfect law.

The Commission should not be called upon to act as prosecutors for violations of the law; it is inconsistent with their duty to calmly and impartially try in a quasi judicial way the many questions that are committed to their determination under the law. All matters of prosecutions and the collecting of evidence and preparation of the cases should be done by the Department of Justice. In this way better results will be reached and better satisfaction given.

This is a large country; the conditions vary. In some sections we have heavy grades, where the expense of construction and operation is great. In other sections the grade is light, the expense of construction comparatively small, and an engine can walk away with a train over a mile long. In some parts of the country the population is dense, while other sections are sparsely settled. The productions vary as much as the grades and density of population. Conditions are entirely different in Maine than in Minnesota, and in Florida than Washington, yet all these different circumstances and conditions have to be met and provided for by the men that handle the traffic, and must be considered by any governmental body whose duty it is to review their work.

The country should be divided into nine sections or districts. There should be a central commission composed of nine members, with a district commissioner in each district, with jurisdiction to, in the first instance, hear all complaints in his district and make such decisions as the facts warrant. Then both parties should be required to fully try their case before this commissioner; all the evidence should be taken that is offered, the same as in the circuit court of the United States in equity cases, and from his decision an appeal should be allowed to the central commission on the evidence taken; from their decision on the same evidence an appeal ought to go direct to the



Supreme Court of the United States. The cases should be placed on the docket as soon as the record shall have been filed, and they should be advanced for immediate hearing.

Even with the enactment of such laws as are now suggested, and their enforcement in the wisest and most equitable way that human wisdom can devise, we are a good way from the millenium in the supervision of railways. New conditions will constantly arise which will cause dissatisfaction, and often injustice, until the tariffs and the service adjust themselves to the business of the country or the section affected, and it will be impossible always to do exact justice. But if we all give our best thought and best effort, we will have as near a perfect system as human wisdom can devise under our complicated form of government, and in doing this I am sure that we will have the assistance of the gentlemen who are in charge of the transportation of the country. [Applause.]

The PRESIDENT. The next thing in order, I believe, is the report of the committee on classification of operating and construction expenses of electric railways.

Mr. MORGARIDGE, of Pennsylvania. Mr. President, the chairman of this committee, Hon. W. O. Seymour, of Connecticut, is unable to be present to-day and has requested me to tender his compliments to the members of the convention and to read the report of the committee. I will say that this committee met with a similar committee representing the Street Railway Accounting Association of America in New York early in the fall, and at this conference it was generally admitted that in most respects the system of operating accounts of interurban electric railways was similar to that of the street roads, but found that there were certain amplifications of this which might be necessary in order to bring about a uniform system of classification. How to bring about this uniform classification was a question. Our friends, the street railway accounting officers, have their system, which they think is the better, while our friends on the steam roads think that theirs is equally as good, if not better; and that is going to be hard to get around. Nevertheless, I think that both sides will make concessions when the proper time comes. The report is as follows:

*REPORT OF COMMITTEE ON THE CLASSIFICATION OF THE CONSTRUCTION, EQUIPMENT, AND OPERATING EXPENSES OF ELECTRIC RAILWAYS.*

It will be remembered that a system of classification of the construction, equipment, and operating accounts of electric railways was adopted by the annual convention of railroad commissioners held in Denver, Colo., July 11, 1899, as fully appears in its record of proceedings.

The system so adopted was brought into use by the more important street-railway companies of the country on June 30, 1900, since which time their

accounts have been generally modeled in accordance therewith, especially in those states requiring annual reports of the operations of such companies.

The committee in charge of this important subject has been continued, with an annual change in its personnel from year to year, until the present time, presumably to note and recommend such changes as may be needed in the form so adopted as they may become apparent in the growth, development, and changed conditions incident to the rapid extension of this method of transportation.

Lest this committee should become so infatuated with a system of accounting which some of them were instrumental in devising as to be blind to its defects, it was thought wise by the members of said committee identified with the operation of electric railways to address a circular letter to the various electric-railway companies, inquiring how the system of classification adopted and now in use for five years had met the requirements of the companies, whether any changes in the system were needed, and if so, in what respect. Such a circular letter was sent out by the committee of the Street Railway Accountants' Association appointed to cooperate with us, and an overwhelming majority of the responses expressed satisfaction with the system and protested against any material change. There were a few exceptions, however, to this general expression, suggesting some slight changes, but which seemed to us unimportant and sufficiently covered by the present system.

A system of railway accounting must have some prospect of permanency in order to secure its general adoption and the uniformity resulting therefrom, so essential for comparative purposes. Originally electric railways were principally confined within the populous centers and their operations consisted chiefly in the transportation of passengers within such densely populated localities. Within recent years they have been extended into the outlying suburbs of such localities and from town to town; also short branch lines, heretofore operated by steam, have been equipped and are now being operated by electricity. On these suburban, interurban, and branch lines a growing feature of their operation is the transportation of light freight, such as fruit, vegetables, milk, butter, eggs, poultry, etc., from the suburbs into the populous centers, and bringing therefrom such supplies in small packages as the surrounding localities may need. A large increase is probable in this kind of traffic, extending, as it now does in some instances, from one state to another, and some modification of the operating accounts may soon be needed to include such traffic and the expense incident thereto. If the anticipated growth and extension of this traffic is realized, it may also soon be wise to prepare a system of income accounts, showing the sources from which such income is derived, similar to that prevailing on steam roads.

While, after careful consideration, the members of the committee are unanimously of the opinion that no change in the classification for electric railways should now be prescribed, they recognize that eventually there should be uniformity in the classification of steam and electric railways so far as may be practicable under the differing conditions pertaining to construction, motive power, and traffic. At present, various items are classified differently for electric than for steam roads, and the accounting officers of electric roads themselves are not in thorough accord as to the proper classification for some of these items. Without all practicable uniformity possible the value of any comparison between the statistics of the two transportation systems is greatly diminished, and the significance of figures in the compiled reports for the newer electric system is greatly impaired.

It is recommended that the committee having this subject in charge, to report at the convention for 1906, be directed to meet with the committee on railway statistics, that such committees confer with the accountants of both the steam

and electric systems with a view of arriving at uniformity to such extent as may, under all circumstances, be considered feasible, and that they make a joint report thereon to the convention.

Mr. BURR, of Florida. I move that the report be adopted.

The motion was carried.

The PRESIDENT. We will hear from the executive committee now.

#### REPORT OF THE EXECUTIVE COMMITTEE.

Mr. BROWN, of Pennsylvania. I desire to say now that at the time of the meeting of the executive committee in Chicago last spring Col. George R. Peck was given an invitation to address this convention on the public supervision of common-carrier corporations. Colonel Peck accepted this invitation. About ten days ago I received a telegram from him, in New York, in which he said it would be impossible for him to be here, and I therefore attempted to get other individuals to address the convention on the subject. I invited a number, and finally succeeded in having a gentleman accept the invitation to address this convention on that branch of the railroad problem. He is well known to this organization, was its president a year ago—Mr. John V. Smith, of the State of Alabama—and he will address the convention some time during to-morrow upon the question of railroad supervision.

I also desire to say, Mr. President, that Mr. C. Loomis Allen, president of the New York State Railway Association, has prepared a paper which I will ask to have read, if the convention has time. If the convention does not have time I will ask the privilege of having it printed in the proceedings. Mr. Allen fully expected to be here to read this paper himself, but sickness in his family prevented his being here, as he advised me by telegram, which reached me at Chicago. I will not press this paper upon the convention, especially if we are driven for time.

Hon. S. H. Cowan, of Fort Worth, Tex., accepted an invitation to read a paper before this convention, but was unable to meet with us here, but will arrive at Hot Springs on the evening of the 18th, and through the kind offices of Mr. Smith, the commissioner from this state, arrangements have been made by which he can address the convention on the forenoon of the 19th at Hot Springs.

Further than that I have no report to make at this time, except that I desire to make this motion: In view of the absence of the secretary and the assistant secretary, both of whom are detained at home through sickness in their families, I move that Mr. W. H. Connolly, chief clerk of the Interstate Commerce Commission, be authorized to act as secretary for this convention.

The motion was carried.

Mr. STAPLES, of Minnesota. It seems to me that we should test the

sense of this convention at this time as to whether we shall have an evening session or not, and I move that when we adjourn that it be until 7 o'clock this evening.

Mr. RICE, of Missouri. I move that we adjourn until 8 o'clock in the morning.

The PRESIDENT. Do you make that as an amendment to Mr. Staples' motion?

Mr. RICE, of Missouri. Yes, sir.

The PRESIDENT. Mr. Rice amends the motion that when we adjourn we adjourn until 8 o'clock to-morrow morning.

Amendment lost.

Motion put to adjourn until 7 p. m., and carried.

Thereupon, at 5.35 p. m., the convention adjourned until 7 o'clock p. m., August 16.

#### NIGHT SESSION.

DEADWOOD, S. DAK., *August 16, 1905, 7 p. m.*

The PRESIDENT. I think we can take up the report of the committee on railroad statistics.

Mr. KILPATRICK, of Illinois. Owing to the absence of the chairman of our committee, Prof. Henry C. Adams, he has asked that I should present the report of our committee to this convention, which is as follows:

#### REPORT OF THE COMMITTEE ON RAILROAD STATISTICS.

In the report of the committee to the National Association of Railway Commissioners at its meeting at Birmingham, November 15, 1904, reference was made to the necessity of an authorized interpretation of the phrases "additions," "betterments," and "improvements" as used in railway accounts, to the end that all the railways of the country shall follow a uniform rule in making a public report of this class of expenditures. It was stated to your honorable body that the chairman of your committee had been authorized to communicate with the president of the Association of American Railway Accounting Officers and to request from this association its cooperation in formulating a proper definition of the class of expenditures named. It was further stated that in response to this request a special committee of accounting officers had been appointed to meet with your committee on railroad statistics and to work out, if possible, a satisfactory definition. By reference to the minutes of the Birmingham meeting it will be observed that this plan approved itself to the members of the National Association of Railway Commissioners, and that your committee was authorized to proceed accordingly.

The committee appointed by the Association of American Railway Accounting Officers was as follows: Messrs. A. D. Parker, S. C. Johnson, M. Riebenack, C. I. Sturgis, and R. I. Farrington.

Your committee begs leave to report that it held a joint meeting with the above-named committee of the Association of American Railway Accounting Officers on March 14, 1905, at the Palmer House, in the city of Chicago, and the following are the minutes of that meeting:

*"Minutes of joint meeting of committee on railroad statistics and special committee of Association of American Railway Accounting Officers.*

" March 14, 1905.

" Present of committee of railroad statistics: H. C. Adams, Wm. Kilpatrick, Thos. Yapp, D. N. Lewis, and C. I. Sturgis. Absent: J. P. Upshur and T. W. Atwood.

" Present of committee of association: A. D. Parker, S. C. Johnson, E. A. Stockton (representing M. Riebenack), and C. I. Sturgis. Absent: R. I. Farrington.

" Pursuant to an arrangement between the committee on railroad statistics of the National Association of Railway Commissioners and the special committee for conference authorized by the executive committee of the Association of American Railway Accounting Officers, a meeting was held at the Palmer House, Chicago, March 14, 1905. Mr. Henry C. Adams was duly elected chairman, and Mr. C. G. Phillips secretary of the joint commission.

" The chair announced that the purpose of the meeting was to consider the necessities for more accurately defining what charges, technically called additions, betterments, and improvements, are properly charged to operating expenses.

" After full discussion, the following general declaration was put before the joint commission and unanimously adopted:

" 'Operating expenses should include all expenditures necessary to keep the property up to the general standard of efficiency.'

" It was moved, seconded, and carried that this declaration be referred to the special committee for conference of the auditors, with the request that a general detail of definitions bearing out such declaration be made, that the special committee report be made to the association, and the association report its finding to the committee on railroad statistics of the National Association of Railway Commissioners.

" There being no further business, the joint commission adjourned sine die.

" H. C. ADAMS, *Chairman.*

" C. G. PHILLIPS, *Secretary.*"

Pursuant to the above agreement, the special committee of the Association of American Railway Accounting Officers made the following report at a meeting of the association held June —, 1905, in the city of New York, which report was formally accepted by the association:

*"Report of special committee appointed to consider the proper interpretation of 'betterments,' 'improvements,' and 'additions.'"*

" The committee, having in view the facts that it is impracticable for railway companies to set aside each year a definite allowance as a depreciation fund, out of which to pay the cost of replacements, etc., and that railroads, as all business enterprises, must make expenditures to keep up the property to the general standard of efficiency demanded by the public and necessary to the safe operation of trains, enunciates at the outset, when defining terms, that the revenue must be sufficient to provide for such expenditures, and that therefore operating expenses should be charged with whatever items are incurred by reason of producing such efficiency. It is distinctly understood by the committee that this general expression must be considered the only one that will meet the demands of proper business enterprises, waiving, of course, whatever policy there may be, as there is in all business, and as definitely stated in Mr. Adams's letter to the association, which has asked for such definitions. The committee recognizes

that the definitions called for are not to cover cost of construction of new or branch lines, extensions of existing lines, expenditures for additional equipment, or other property, the cost of which items should be charged in accordance with the 'Classification of construction expenditures' promulgated by the statistician of the Interstate Commerce Commission under date of August 24, 1897, and the 'Classification of equipment expenditures' as set forth in the executive committee's report of this year and already adopted by the National Association of Railroad Commissioners at Birmingham, Ala., November 15, 1904.

"In the opinion of the committee, and in accordance with the declaration already set forth, the following items are properly chargeable to operating expenses under the general heads 'Maintenance of way and structures' and 'Maintenance of equipment':

" TO MAINTENANCE OF WAY AND STRUCTURES.

"Sloping cuts and widening embankments.

"Ballast.

"Block and other systems of road or track signals, including interlocking apparatus, signals, and other safety appliances.

"Snowsheds and snow fences.

"Cost of filling bridges and trestles with earthwork.

"Rails, fastenings, and other track material laid in track, regardless of weight of metal removed.

"Ties replaced, regardless of class, kind, or number, per mile.

"Replacement of bridges and culverts.

"All fences, road crossings, signs, and cattle guards.

"Replacement of all buildings, including cost of additional buildings necessary to operations of property.

"Replacement of docks and wharves.

"Additional telegraph and telephone lines necessary for operations of property. This does not include construction of telegraph and telephone lines for commercial business.

" TO MAINTENANCE OF EQUIPMENT.

"Replacement of locomotives, passenger, freight, and work cars and marine equipment, regardless of original cost, weight, power, or capacity of equipment replaced.

"Additional work equipment necessary to maintain property up to the general standard of efficiency.

"Replacement of shop machinery and tools, including additional machinery and tools necessary to maintain equipment up to the general standard of efficiency.

"A. D. PARKER, *Chairman.*

"C. G. PHILLIPS, *Secretary.*"

Your committee now begs leave to report its approval of the above report to the Association of American Railway Accounting Officers, and to recommend that the National Association of Railway Commissioners accept the opinions therein contained as an expression of its opinions, and, further, that all reports from the carriers, whether made to the Interstate Commerce Commission or to the state railroad commissions, be adjusted in harmony with the rules there laid down.

In submitting the above recommendation the purpose held in view by your committee is to provide for a uniform method of treating this class of expendi-

ture, and to so adjust the form of annual report that all expenditures for "additions," "betterments," and "improvements" should be accounted for, whether such expenditures are charged directly to current income, or to a fund set aside from the income of a previous year, or to capital; and to that end it is recommended that pages 27 and 29 of the Form for Annual Report to the Interstate Commerce Commission and the corresponding pages of annual reports to state commissions be amended by the insertion of a column calling for a detailed statement of all expenses for "Cost of road, equipment, and permanent improvements" incurred during the year covered by the report in question that are paid for out of funds set aside for this purpose out of the earnings of previous years. Should this recommendation approve itself to the association, it will result in securing a classified record year by year of all moneys spent by railways for the improvement of their properties from whatever source these moneys may be derived.

Mr. NEVILLE, of Illinois. I move the adoption of the report.

Mr. STAPLES, of Minnesota. I want to ask Mr. Kilpatrick to explain to what item "new buildings," "filling of trestles with earth," and the "purchase of new engines" were chargeable? I did not understand.

Mr. KILPATRICK, of Illinois. We decided in our committee meeting that they were betterments and should be charged to "operating expenses." The sense of the committee was that the road in order to be kept up to a standard of efficiency would stand the charges from year to year and that all of the new buildings and new engines and the filling of trestles with earth and matters of that kind were in reality betterments and ought to be paid for out of operating expenses of the road, and that it was due to the railroad companies to allow them to keep up the high standard of efficiency which is demanded from year to year out of the operating expenses of the line.

Mr. STAPLES, of Minnesota. I would like to ask in that connection where you draw the line between the changing or filling up, say, of a large trestle with earth and the changing of a grade? It is impossible to say what the expense of either might be, but it might be a large expense in either case. The changing of grade would entail, perhaps, a great expense, and it does not seem to me that it would properly be charged to betterments or properly charged to permanent improvement. If you open that as broad as this report seems to indicate, it seems to me that you may charge to operating expenses almost the rebuilding of a system. In this it seems to me we are going a little too far.

Mr. KILPATRICK, of Illinois. In reply I would say this: It is rather a difficult question to draw the line just exactly where the money paid out for betterments and improvements shall be charged—whether to operating expenses of the line or against some other account. I know of a case in point where the road running from Toledo to St. Louis relaid the whole line from Toledo to St. Louis with new steel out of operating expenses for that year, and it was considered by the committee, after a very exhaustive discussion of the whole subject, that

the railway companies ought to be allowed to expend the money for improvements or betterments, or whatever you might call it, to keep the standard of the line up to the efficiency demanded by the public service at the expense of the operating accounts of that road, and we have so reported. There are three other members of the committee present, and possibly they might want to say something on this subject, but that is my opinion and that is the opinion which was concurred in by a majority of the members of this committee present.

As a matter of fact the disposal or placing of the money necessary for the expenditures of the road are generally placed to the debit of the account indicated by the president of the company, and even if this committee report is concurred in we may find in some cases that a good many of the betterments are not charged to the operating account. However, it was thought best that we should encourage a system of uniformity between all the roads—and that is what has been done by this association ever since its inception. They have approved different systems of the disposal of the accounts of the railroads, which has brought about uniformity of accounting by the railroads that was not in force prior to the organization of this association, and we thought it was in the line of uniformity that some proposal be made as to what to do with money expended for betterments.

Mr. STURGIS, of Association of Accounting Officers. I rather prefer not to discuss this question to-night beyond the point of saying that I think it is perfectly safe to leave the report of the committee as it is, and as written by Professor Adams, who is pretty careful in what he reports, and the only changes that have been made are minor ones. I consider the whole subject as brought up by Mr. Staples a very serious one, and one that would require considerable discussion of detail. I do not feel like entering into a detailed discussion of all that was done by the committee originally, and if you are not satisfied to accept the report as made by Mr. Adams, I shall be glad to talk about it to-morrow morning, but not to-night.

Mr. ROBINSON, of Kansas. I presume the object of this report should be to get at the exact condition of the road being maintained as it started in at the beginning of the year. If that committee's report is adopted there is nothing to hinder the filling of many very high trestles, which would be very costly. There is nothing to hinder the changing of curves. There is nothing to hinder changing grades. I have in mind one road in Kansas spending \$8,000 per mile on a branch road for betterments, changing the percentage in but little over a mile of fill up to 14 feet at the bottom and going down 10 or 12 feet at the top of the hill. The cost of that will be much more than the cost of the original construction of that part of the road. This report, I think, will not lead to any injurious effects, because the tendency of the roads is not to put a great amount of money in them



without capitalizing or bonding. The tendency is the other way, as far as I know, but if the owners of a road saw fit they might start with a \$20,000 mile road and make it a \$60,000 or \$70,000 mile road, and possibly that might affect the taxation of that road if it were figured on the bonds and capitalization, but as I said, I think there is no danger in that line, because it is not the common way of the railroads of bettering their lines. This road is taking up old 50-pound steel and putting down 80-pound steel. It has cut through 50 feet in some places to get away with curves, and as I said, in many places they have cut the grades from nearly 3 per cent to  $1\frac{1}{2}$  per cent. The operations of that road made it necessary in portions. Their engines would haul a hundred cars in some places and in others forty cars was a load, and they either had to have a pusher on those trains or had to cut their trains. Now, it seems to me that such permanent improvements and betterments of a road ought to go in capital stock and not out of the earnings. There is one point in that. The Supreme Court, as I understand it, has decided that a railroad must be allowed fair compensation for its capitalization. If it can do that it would take the earnings, continually putting them into that road, and leave such light earnings that they would be allowed to charge a very high rate over that road if that rule was put in force.

Mr. STURGIS, of Association of Accounting Officers. I think that is more a question of how these expenditures should be reported. Professor Adams found that the present report was not sufficient, in its requirements, to bring out all the information he wanted in regard to the expenditures for improvements, and he practically provides for the addition of a column on certain pages, as stated by the report, in order to bring out the detail of expenditures for such charges as Mr. Robinson refers to, and I think we are perfectly safe in allowing the report to go through with that understanding.

Mr. STAPLES, of Minnesota. I did not intend to raise the point to make any criticism upon the report in any case whatever, but I take it for granted that any committee which reports here is very glad to have its report discussed, and the point I wished to make and have made has been well covered by the second last gentleman who spoke when he said that the items properly charged to operating expenses or to the operating account of the road should be those items which are necessary to keep the road up to the standard, say, on the date of January 1, or any other date. The company is entitled to keep its road up to that standard, and it seems to me that it can charge properly to operating expenses any items of expense which go to keep the road up to that standard, but when it goes beyond that it seems to me it is very unreasonable. Now, as Mr. Sturgis has well said, we understand perfectly the purpose of this report, but after all the object in the end is to arrive at uniformity. Now, Mr. Sturgis, representing the rail-

way companies, and others here who represent both sides—the people and the companies—are just as anxious for uniformity as any of us. The railroad commissioners who have to treat with the companies want all the information that is obtainable on that question, and we can best handle these subjects when that information is made upon a uniform basis in all the states. We have then a means of comparison.

Now, take the Northwestern road in our state. It is spending this year large sums of money for the purpose of straightening its line and reducing its grades—I am unable to say how many thousands of dollars—but it is an enormous sum of money. Now, it seems to me that we do not need to debate the question whether this expense is chargeable to operating expenses or not. It certainly should not be, in my opinion. There is my difference from the committee, but, as Mr. Sturgis has said, we can perhaps let this report go, but I do not think we can let it go through and then we ourselves understand that it has another meaning than what the report shows.

Mr. FAIRCHILD, of Washington. I desire to say that I duly appreciate at this time the need of the report, but from the remarks that have been made it strikes me that it is a matter of very great importance to the new states—states like Washington, in particular.

As you will leave Spokane on your road to the coast over the Great Northern, for a great portion of that distance you can look either to the right or left and there you will see the line of the Great Northern Railroad as it existed a year or two years ago. It has been the question of spending millions of dollars in the past few years to straighten out the curves of that road and get the grade in proper condition. Coming over on the Sound country we find roads built running along the Sound on trestles. That goes into the cost of construction. Now, as that road is made we find solid rock which they have had to go through. As a matter of fact the entire earnings of companies in these new sections, if this system were adopted, would go for betterments, and there would be no earnings whatever. It seems to me that it is a matter of much greater importance to the new states than it would be to the lines where the road is very well straightened and in proper shape, and for that reason I think the report is rather dangerous for the new states.

Mr. YAPP, of Minnesota. I would just like to say one little word there in explanation of the recommendation that pages 27 and 29 should be allowed to include another column. In the present annual reports you will there see a very large amount of money—probably \$2,000,000 or \$3,000,000—as paid for betterments and improvements of roads, but there is no way of finding out how this money is spent when you come to examine the reports, and the idea of adding this column is to keep track of the money so set aside for that particular

purpose. It may be spent in one, two, three, or four years, but means the keeping track of the expenditures or of the money taken out of the earnings for that particular purpose.

Mr. STURGIS, of Association of Accounting Officers. The idea of Mr. Fairchild, and also of Mr. Staples, is that these expenditures for extraordinary work will be lost sight of, so that they will not be able to determine what are the actual corporation expenses and what has been expended in improvements and betterments. As I understand it, the reports set out very clearly and distinctly—the reports to the commissioners—just what expenditures have been charged to operating expenses and which are for betterments and improvements—that is, the report leaves to the roads the right to charge against current income the filling of such trestles as you refer to, but particularly says that you must show in the report just how charged—how much charged to operating expenses on that account.

Now, I think that Mr. Fairchild, if I may refer directly to the member, would not advocate having them all charged to construction accounts. You had just as soon have them charged against current income, provided it was shown distinctly how much of that class was charged to current income account, so as to arrive at the net earnings left after deducting actual operating expenses from the earnings, and you could use that figure for taxation or whatever was required by the state laws. Is that your understanding?

Mr. FAIRCHILD, of Washington. I think that is correct.

Mr. STURGIS, of Association of Accounting Officers. The various improvements that go on from year to year, and where they build new lines, should properly be charged to construction account. I think that is all the meaning of the report. I think Mr. Staples misunderstands the situation. It is not to hide something in the operating expenses, but when they do charge something to that account they must show just what has been so charged.

Mr. STAPLES, of Minnesota. May I ask this question? Just assuming that what they do expend—as you say, they show in this column just what they have charged to operating expenses and what they have charged to betterments—assuming that they do that, how am I to know, not being conversant with every detail, what is properly chargeable to operating expenses, assuming that your purpose is to find out just what the net earnings of the system have been for a given time?

Mr. STURGIS, of Association of Accounting Officers. I suppose your idea is to determine whether they have put in the column provided for that purpose just what they should have put in there?

Mr. STAPLES, of Minnesota. Yes, sir.

Mr. STURGIS, of Association of Accounting Officers. Is it not true Mr. Staples, that if instead of putting it in that column they put it

in another column—if they put in the column provided for charges to capital certain figures—you can not tell whether they are charging to capital the right figures or not?

Mr. STAPLES, of Minnesota. That is true.

Mr. STURGIS, of Association of Accounting Officers. So there would be no more doubt in the proposed provision than in the existing one?

Mr. STAPLES, of Minnesota. Except that I do not think that they should charge to capital account anything that is not properly charged to capital account.

Mr. STURGIS, of Association of Accounting Officers. I do not think so either, as far as that goes, but here you get a sworn report from the railroad. The report only claims at that time that what has been charged to current income is improvement of property.

Mr. LAWRENCE, of Washington. It is a little difficult for me, and I presume it is for some of the others, to thoroughly grasp the meaning of the report and the differences that have been explained here, and I believe it would be wise to defer action on the adoption of the report until the beginning of our session to-morrow, or some suitable time, and I move that the report of the committee be laid over until to-morrow.

The PRESIDENT. Do you make that as an amendment to the motion for adoption?

Mr. LAWRENCE, of Washington. Yes, sir.

The amendment was carried.

The PRESIDENT. I think we can take up one more report now, and that is the report of the committee on delays in the enforcement of commissioners' orders.

Mr. YOUNG, of Minnesota. I desire to say that no member of this committee made any suggestions as to this report, but the report as prepared reads as follows:

**REPORT OF THE COMMITTEE ON DELAYS IN THE ENFORCEMENT  
OF COMMISSIONERS' ORDERS.**

Annually for sixteen consecutive years this subject has appeared before this association for discussion and consideration. Upon examination of the reports of the commissioners of the various states, we conclude that there is little if any cause for complaint on account of delays in the enforcement of orders of state commissions.

It seems to be the universal practice in the state courts to advance the trial of intrastate litigation and to furnish prompt relief, though many delays in the enforcement of orders of state commissions still exist which will require time and patience to rectify. Inasmuch as the population of the state is comparatively small, defects in state jurisprudence soon become known, and an adequate remedy speedily follows.

Serious trouble lies in the dilatory enforcement of orders of the Interstate Commerce Commission and in the time consumed in the federal courts in the trial and disposition of appeals and writs removed from state courts. In

nearly every city and Territory in the United States some municipality, person, or business enterprise complaining of the violation of the laws controlling interstate commerce, and having appealed from the order of the Interstate Commerce Commission or from the decree of the state courts to the federal courts, have been compelled there to wait until courage is exhausted and interest in the controversy has ceased.

In his report to this association at its annual meeting held in 1904, our chairman specifically cited many cases which in their course to final decree in the federal courts have dragged along through three, five, and six years. It is, therefore, useless to again call your attention to the experience of individual litigants. It is true that in February, 1903, Congress passed a law which is a step in the right direction. The act of February 11, 1903, is an act to expedite certain cases in the federal courts. This law, in substance, directs that any suit in equity in which the United States is a party which shall be brought in any circuit court of the United States under either the interstate-commerce act of 1887 or under the Sherman anti-trust act of 1890, or under any like act hereinafter to be enacted, may, upon application of the Attorney-General of the United States, be given precedence over other cases (except criminal cases), and in certain instances this act eliminates the United States circuit court of appeals from the list of federal courts through which the suit must pass to reach determination in the Supreme Court of the United States.

Prior to the passage of this law there had been doubt as to whether advancement in the hearing and determination of certain cases over other pending cases in the federal courts might be accomplished under change in the federal court rules or was necessary that the reform come through an act of Congress. Inasmuch as it was found necessary to advance the class of cases above mentioned by an act of Congress, we conclude that any extension of the law to cover cases in which the United States is not a party must also come through Congress. The act of February 11, 1903, does not cover litigation in which the United States is not a party, and in this respect the law is not sufficiently comprehensive, and should at once be amended so as to include all important litigation involving any question or controversy concerning interstate commerce.

Therefore your committee again recommends to this convention the adoption of the following resolution:

*Resolved*, That the convention respectfully urges and recommends the passage by Congress of an act giving precedence in the federal courts to the consideration of cases involving the orders of state railway commissions, and involving orders of the Interstate Commerce Commission in which the United States is not a party.

Mr. D. H. SMITH, of South Dakota. I move that the report be adopted.

Mr. KILPATRICK, of Illinois. I move to amend that motion, and that the report of this committee be passed over until to-morrow morning, for this reason: That a large number of the members of this convention are not present at this time, and I think it is an important matter. My understanding of the report of this committee was that it was the report of a committee about delays attendant upon the enforcement of commissioners' orders. Now, the report itself sets up the fact that from the reports of all the commissions that they have noticed there does not seem to be a very large cause for com-

plaint, and then it goes on to say that there is cause for complaint—that the orders of the Interstate Commerce Commission are not fully cared for. That is my understanding of the reading of the report and that is the particular reason why I want it to come before the full convention, and I move that it lay over until to-morrow.

The amendment was carried.

Mr. KILPATRICK, of Illinois. I move that we now adjourn until 9 o'clock to-morrow morning.

The motion was carried.

Thereupon, at 8 o'clock p. m., the convention adjourned until 9 o'clock a. m., August 17.

## SECOND DAY'S PROCEEDINGS.

DEADWOOD, S. DAK., *August 17, 1905—9 a. m.*

The PRESIDENT. The convention will now come to order.

I have a telegram from Mr. Moseley, Secretary of the Interstate Commerce Commission, which I would like to read.

Regret inability to be present, but I am with you all in spirit and send good wishes for the success of the convention and for the welfare of its members, both individually and collectively.

EDWARD A. MOSELEY, *Secretary.*

Mr. W. G. SMITH, of South Dakota. I have just received several letters which I would like to read to this convention. The first one I will read is from the general manager of the Chicago and Northwestern Railway Company, located at Omaha, Nebr., and is dated August 15, 1905. He says:

DEAR SIR: I sincerely regret that I will be unable to accompany the commissioners to the Black Hills. I have just returned from Cheyenne this morning and am obliged to leave to-morrow for Chicago on important business. When I wrote you last week I thought I could keep myself within my own territory through this week and have the privilege of doing my part toward explaining to the commissioners from the East, who are strangers to this country, the true situation with reference to all the features of industry and transportation in this trans-Missouri country. It is an opportunity that I have looked forward to, as I am an eastern man myself and understand the difficulties eastern men have in comprehending the magnitude, versatility, and greatness of this trans-Missouri country of ours. I exceedingly regret the circumstances which prevent my being with you, and beg you to extend to the commissioners the hospitalities of our company, and if there is anything you want, or any place you want to go within our reach not already included in your itinerary, just speak to the first representative of the company you meet and he will communicate it to such officer as will see that you get it.

Yours, truly,

GEO. F. BIDWELL, *Manager.*

I have another letter from a man who gave us an address last session at Birmingham, Mr. Klein, superintendent bureau of railways, of Pennsylvania, dated August 7, 1905.

MY DEAR MR. SMITH: I have your gracious and gentle reminder of the meeting in Deadwood, echoes of which we have had for days and weeks in and around the headquarters of our chairman of the executive committee, who has been untiring in his work. He will be on hand with the Pennsylvania delegation, but I regret to say that I will only be with the party in spirit. Circumstances will prevent my presence. I am sure I would have had my full share of instruction and enjoyment during the trip. My head and heart were full of it for a time, and I have thought of some fitting words to say at the time when the glad hands that I know will be extended by the good people of the great West, in the shadows of the mighty Rockies (where everything is golden), and the big hearts of the good men and women of the Dakotas in sweet accord will welcome the pilgrims from the four quarters of our Republic to the rich domain of the land of gold.

Wishing you all a very successful season, with good results and perfect enjoyment during the coming weeks and for all time, I am, yours, very sincerely,

THEO. B. KLEIN,  
*Superintendent Bureau of Railways.*

The PRESIDENT. The acting secretary has some letters to read this morning.

Mr. CONNOLLY, acting secretary. The president of this association has received the following letter from the secretary of the Louisiana commission:

BATON ROUGE, August 9, 1905.

HON. IRA B. MILLS,  
*Chairman National Association of  
Railway Commissioners, Deadwood, S. Dak.*

MY DEAR SIR: The railroad commissioners of Louisiana regret very much the conditions which prevent their being present at this time, but wish to congratulate you on the interest which has been manifested in anticipation of what promises to be the greatest convention the association ever held.

I am sending you to-day a few of our annual reports and maps. It has occurred to me that there may be some present at the convention who have not been furnished with these and to whom they may prove interesting.

Our map has attracted wide attention, and is similar to the maps which have been prepared in some of the other states. The idea suggests itself to me that a similar map of all the states would be of great value, if prepared under the direction of the railroad commissions, especially if they are uniform in character and information. Our map has been of vast benefit to the shipping public, and is used extensively by railroad companies and investors.

Wishing you and the members of the convention a delightful sojourn in the West after a most successful meeting of the association, I am, with respect, yours, very truly,

W. M. BARROW, *Secretary.*

I have here another letter from the general claim agent of the Northwestern Railway Company.

CHICAGO, ILL., August 14, 1905.

HON. IRA B. MILLS,

*President Association of Railway  
Commissioners, Deadwood, S. Dak.*

DEAR SIR: I desire to call the attention of your association to the many different forms provided by the various commissions on which the railroad companies are required to report injuries to persons. It seems to me, as it does to all of the other claim agents with whom I have talked, that the commissions, as well as the railroads, would be greatly benefited and the statistics compiled therefrom would be much more valuable if some uniform blank on which to report these accidents was adopted by your association. I therefore respectfully call your attention to the matter with request that if you deem it proper the same be brought to the attention of the association for such action, which I hope may be favorable, as it may deem proper to take.

Yours, respectfully,

R. C. RICHARDS,  
*General Claim Agent.*

Mr. STAPLES, of Minnesota. It would seem to me that the last letter read might properly be referred to the committee on statistics. I therefore make the motion that the subject-matter of this letter be referred to such committee.

The motion was carried.

Mr. W. G. SMITH, of South Dakota. I wrote the governor of Oregon and have a reply from him in which he invites the convention to make a stay in that state.

Mr. MCNEILL, of North Carolina. I move that a committee of five be appointed to recommend a time and place for holding the next convention.

The motion was carried.

Mr. LAWRENCE, of Washington. I move that the report of the committee on railroad statistics, which was laid over from last evening, be taken up and the report adopted.

The motion was carried.

The PRESIDENT. When we adjourned last evening the report of the committee on delays in the enforcement of commissioners' orders was under discussion. The report is now open for debate.

Mr. KILPATRICK, of Illinois. I just desire to say that in asking for the delay in the adoption of this committee's report, which was submitted last evening, I wished to have the commissioners express their opinions in regard to the report. Now, either I am misled by the title of the report or the subject-matter does not quite agree with its title. My opinion of the committee's report was that they should make a report upon the delays incident to the enforcement of the orders and decisions of the state commissions, and as stated last



night and as I believe from the report of this committee, nearly all of the subject-matter of this report relates to the delays consequent upon the enforcement of the orders of the Interstate Commerce Commission.

Now, I do not want to seem to criticize, or anything of that kind, but we have for the last seven or eight years, at every session of this association, gone to work and framed a resolution asking Congress to extend the powers of the Interstate Commerce Commission. This, as I understand it, is an association of railroad commissioners of the different states, and, so far as I am concerned, I desire to say that the work of this association confines itself largely to the work of the state commissions and I am not prepared to go on here from year to year and allow this association to be made the cat's-paw to pull the chestnuts out of the fire for the Interstate Commerce Commission, who, up to this time and for the last many years, have not seen fit to be present at our meetings and take part in our deliberations. If they want anything from this convention in the way of moral and material support they ought to come here and be present and take part with us. Now, we go on from year to year and make a resolution asking that the Interstate Commerce Commission's powers be broadened, and I am not going to submit to this from this time forward. I want these things confined to the duties of the state commissions which we represent. We represent the states of the Union, and the powers of the different state commissions are very valuable to the people of the states.

I realize the fact that a great deal of the work of the supervision of railroads can be very rightly taken care of by the Interstate Commerce Commission, but here we are as representatives of our different states, and they want to be liberal—the work of our commissioners—and absorb it into the Interstate Commerce Commission, which I will not indorse, and I desire to say that when we do the work of state commissions we want to confine ourselves more particularly to that work, and I am not in favor of the adoption of the report of this committee.

Mr. FAIRCHILD, of Washington. I think the gentleman lost sight of the real objects of the resolution. The federal court is open to all the railroads who happen to be foreign corporations, and most of them to the states through which their lines run, and in case of the adoption of rates by these commissions that are given the power to fix rates the railroads begin a case in the circuit court of the United States, and if that case is appealed to the Supreme Court of the United States I think it is pretty safe to say that four or five years will expire before there will be a final determination of the matter in many of the states; and it is the case in the state of Washington that, the appeal being filed, the railroad companies go along

and charge the same old differences. I feel that if the railroad saw fit to go into the federal court, then the calendar should be cleared; that is, the case placed at the head and speedy determination arrived at. In the state of Washington it is provided by statute that commission cases have precedence over other cases in the state court, and I think that this resolution should be adopted, so that if action is instituted in the federal court that the same working and same system shall follow in the federal court.

Mr. CHADBOURNE, of Maine. Perhaps I do not understand this resolution; perhaps I am wrong in the belief that the railroads of the country and the common people are all on the same level in the federal courts. Possibly I am wrong in the idea that the federal courts of the United States are entirely able and competent to make such rules as they believe will best serve the largest number of people of this country. Now, it takes, in any instance, a number of months and perhaps a number of years to get a case through the federal courts. Why? It is fair to assume that the federal courts are overworked. In our state we know they are. Now, am I to understand that this association, or even Congress, is to dictate what shall be their rules and practice of procedure? In any suit parties living in different states have the right to go into the federal courts, and corporations and railroads have the same right, and it seems to me almost folly that we should try to dictate, or Congress should try to dictate, to the courts of this great country what shall be their method of procedure and what cases shall be put forward on the calendar. In spite of all we can do that spirit of fairness that pervades the whole country from the great President down demands that all should stand on the same level and that all business should be given all the expedition possible. Now, I may be wrong in this. If so, show me where I am wrong. If I am not wrong, will not the broader idea prevail that all business of the federal courts be put forward and carried to judgment at the earliest possible moment?

Mr. YOUNG, of Minnesota. Inasmuch as I prepared this resolution and this report, perhaps I ought to explain the intention of the report.

Now, I understand, from reading the reports of this convention for several years, that it had been universally reported that the laws of the state—of each state of this Union—were such that decisions coming from the various commissions of the state were rapidly acted upon by the courts of the state. In other words, no trouble on that score, but the trouble was when these cases got into the federal courts. We had one or two from Minnesota, and other members of the convention, it seems from our reports, reported cases from other states that had been delayed from three to six years. Therefore, I thought and concluded that there was no fault to find sub-

stantially with the way the state courts handled the decisions of the commissions of the various states, but the trouble is delay in the United States courts. Now, you know there was an act of Congress in 1903 advancing certain cases upon the calendar—certain cases that came from the Interstate Commerce Commission or in which the United States was a party—but it did not advance any of the cases which should come from the various states, and that is what I concluded was the trouble now. We have cases in Minnesota which go through our county and state courts, and then, when they are delivered to the United States court, there is no provision for advancing them upon the calendar. There is where the delay occurs, and therefore I prepared a resolution which is included as a part of this report stating that we recommended that Congress pass a law advancing state commission cases and other cases in which the United States is not a party upon the calendar. Now, I will read that resolution again. That is just what it means:

*Resolved*, That the convention respectfully urges and recommends the passage by Congress of an act giving precedence in the federal courts to the consideration of cases involving the orders of state railway commissions, and involving orders of the Interstate Commerce Commission in which the United States is not a party.

Now, if an order comes from the Interstate Commerce Commission in which the United States is not a party, that, we recommend, shall be advanced upon the calendar. If an order comes from a state commission, is appealed from the state courts to the federal courts, that is one of the cases that we recommend in this resolution shall be advanced upon the calendar. In other words, it covers that which was left out in those acts of 1903. That is all there is to it.

Mr. W. G. SMITH, of South Dakota. The South Dakota rate case was fought about as hard as any and lasted between three and six years, but we never had any trouble about getting that case advanced. Of course there was no law to compel them to advance it. The idea passed through my mind from what I heard last evening that the commissioners of each state are closer to their individual delegations or Senators and Congressmen of the individual states, and perhaps action might be gotten quicker and better if our individual commissioners of the individual states would take this matter up with their delegations and urge the views of this association.

Mr. CHADBOURNE, of Maine. I have no objection to the passage of any resolution which would expedite the business in the federal courts. I do not know that I have any particular personal objection to the railroads being put ahead of any other interests in the country. They are the great interests that have made this country what it is. But how are we going to appear when we, as a body, go to the great federal courts of this great United States; as I say, the greatest and

most powerful tribunals on the face of God's earth. There is not a court on the face of God's earth that has the power of the Supreme Court of the United States. Everyone knows who has had anything to do with the federal courts that those judges are greatly overworked, that the calendars are—I won't say encumbered—are covered with cases that have to wait their turn. Any other convention as large as this convention, should we urge upon Congress the passage of some resolution which would advance these cases, could urge a similar resolution which would put in preference land claims, or a hundred and one different claims.

Now, is it the purpose of this resolution to put railroads ahead of everybody else—of all the common people? I do not believe that any resolution that we could pass here would have the least value, simply because the federal courts are doing all they can in all cases, and I do not believe that it will be possible to give any of our cases any advantage over any other cases quite as important to the people of this country.

Mr. LAWRENCE, of Washington. I am a little surprised at some of the spirit that has been manifested, as though there might be anything between the state railway commissioners and the Interstate Commerce Commission. If the members of the Interstate Commerce Commission are not here; if they have not been attending these conventions, then they have undoubtedly been out of touch, and are at present out of touch, with the spirit of aggressiveness in this country of ours, which is seeking to find solution for the great question of the true relationship that should exist between the transportation companies and the people. And this meeting, as I take it, is for the purpose of ascertaining and finding out the line that marks the distinction between the rights of the people and the rights of the transportation companies. This resolution goes to the question of taking up a matter involving public interests and advancing it on the calendar of the federal courts. The objections made last night to carry this report over until this morning were that the report of this committee was to the effect that the decisions of the state commissions were hastened while the decisions of the Interstate Commerce Commission were not hastened, and it seems to me that this is fully covered in this resolution which asks for the hastening of cases or orders of the state commissions as well as of the Interstate Commerce Commission. Now, it seems to me that there should be no question in our minds as to taking action on a resolution of this kind. I do not think it would bind the courts in any manner, or that Congress is going to be bound by it and is going to enact this legislation; but we will manifest the spirit of this convention in emphasizing the fact that the question of enforcing the orders and decisions of the state railway commissions and of the Interstate Commerce Commission is

a question of great public importance. As I understand the matter, it is not the question of taking up either special matters in favor of the railroads or against the railroads. It is a question that involves the power of regulating the railways that involves the interest of a large number of people. It has been done in the past, and I see no reason why it might not be done now; and, as I said, while it would not bind the courts, it seems to me as a National Association of Railway Commissioners, working in harmony, that we should pass this report and adopt this resolution.

Mr. STAPLES, of Minnesota. It seems to me that we have lost sight of the real purpose of this resolution. The resolution is advocated upon the theory that it is the interests of the people as a whole and not as individuals that we are attempting to serve, and upon that theory it seems to me that the resolution is proper. Congress has already recommended that practice in a certain character of these cases, and now we only ask to have it encompass all such cases. We are not attempting to force railways to submit to the decisions in the courts as against railways only. It is entirely due to the fact that we are attempting legislation for the benefit of the people as a whole; they are interested in the question as a whole. It is not individually at all. Upon what theory does a state enact law which gives the state the first claim in a bank when the bank fails? It is upon the theory that the funds deposited there belong to the people; therefore the state has the first claim in the funds which remain in the bank, and it seems to me that the proposed legislation is upon that same theory.

Mr. YOUNG, of Minnesota. In 1903 or 1904 President Roosevelt recommended to Congress that certain cases be advanced upon the calendar in the federal courts. A bill was passed to that effect, in which certain cases in which the United States is a party are advanced upon the calendar and appeal is allowed from the circuit court of the United States direct to the Supreme Court.

Now, all that this resolution recommends is that cases coming from the states in which the United States is not a party, and cases coming from the Interstate Commerce Commission in which the United States is not a party, shall also be advanced upon the calendar. Now, if Congress can advance these cases in one instance it can in the other instance, and it is simply a matter of recommendation by this convention whether we desire our cases to have speedy trial or whether we wish delay in the state cases as in the national cases.

The PRESIDENT. The question is upon the adoption of the report.

The motion was carried and the report was adopted.

The PRESIDENT. Mr. Smith, of Alabama, was to make us an address, and we probably have time to hear him now. If you will excuse me just a moment, Mr. Smith, however, I will now appoint the committee

to suggest the time and place for holding the next meeting of this association, as follows:

Mr. McNeill, of North Carolina; Mr. W. G. Smith, of South Dakota; Mr. Chadbourne, of Maine; Mr. Lawrence, of Washington, and Mr. Young, of Minnesota.

ADDRESS OF HON. J. V. SMITH, OF ALABAMA.

Mr. SMITH, of Alabama. Mr. President and gentlemen of the National Association of Railway Commissioners: My relationship for the past few years to this association has been so close and intimate that I would have felt no embarrassment whatever in talking to you were it not for the fact that the few feeble remarks that I shall make are to take, in a measure, the place of the remarks which were expected to be made by the distinguished gentleman who was invited to make this address and who found himself unable to do so.

The question of the power of the regulation of the railways of this country, both by state and federal laws, is so clearly defined by the Constitution of the United States and so often upheld by the various courts, state and federal, that it is no longer an open one. It occurs to me, therefore, that the question which would be of most interest to this association is not whether Congress has the power to regulate the railways of this country, but as to whether or not the conditions exist at this time which make it necessary that Congress should exercise this power; second, to ascertain, if possible, what those conditions are which make it necessary, and, third, to ascertain, as far as it lies in our power to do so, how far Congress should go in this matter at this time.

Now, upon that branch of the subject I have given some study for the last several years and have prepared a short paper upon the subject, and have sought, as far as lay in my power, to ascertain and to summarize briefly what the result of the discussion of this question has taught us. In the celebrated character created by Dickens in his *Pickwick Papers* you will find that this expression is used: "The art of letter writing consists in making it short, so that the reader will wish there was more." So to follow the precepts laid down by that celebrated gentleman, Mr. S. Weller, I have made my report short, and thereby hope to escape the suggestion by the association that they are too extended.

Now, Mr. President, I shall read a few brief remarks to this association, with the hope that the suggestions contained herein, if they do not meet the full approval of this association, will at least have their careful and conscientious consideration.

The discussion of the question of governmental regulation of freight rates has unquestionably done much to enlighten the Ameri-

can people upon this all-important subject. That the result will in the end prove helpful and beneficial, both to the people and the railways, can hardly be gainsaid by any right-thinking or fair-minded man. That there is, or was, some just cause for the universal discussion and agitation of this question is evidenced by the large and enthusiastic following which the leaders of this movement have been enabled to command; for while the American people are full of sentiment and are emotional to a certain extent, no large number has ever been known to pursue an ignis fatuus, or to follow long in the wake of a cause not founded upon just principles. The voice of the people, therefore, in this republic should always be heard, and no political party, corporate body, or individual can safely engage in any serious effort to stifle public discussion, or escape the lime light of public scrutiny and examination. And so it came about that the American people determined to probe to the bottom of this matter and find out for themselves where the evil lay, and, finding it, to root it out. Under the leadership of the fearless, somewhat strenuous, incorruptible, and able young patriot who stands at the head of national affairs it was determined to place this subject under the X ray of public examination. It was highly essential to the welfare of the country that the public should know how much of this complaint was founded upon just cause, and how much was due to the efforts of those agitators whose only interest and design was to stir up the people and ride into political power upon their passions, prejudices and supposed ignorance of public affairs. There are two classes of agitators who have figured prominently in this matter. One thirsting for political power, and the other, while declaiming against "frenzied finance" and public corruption, have not ceased, by questionable methods, to rake the dollars from the public till, while the great body of the American people, who likewise have taken, and are still taking, a deep interest in this subject, are actuated only by a patriotic desire to see that justice is done both to the people and the common carriers as well. The evils complained of were known to spring from either one of two causes—first, extortionate freight rates, or, second, rebates and unjust discriminations. Now, let us calmly, dispassionately and fearlessly inquire what the result of this investigation has shown, and, thinking for ourselves, determine what is right and let the people know the result of our finding. I shall state briefly what, to my mind, has been demonstrated conclusively by this investigation, and my conclusions drawn therefrom.

First. It has been clearly shown, and proven by statistics which I have never heard questioned, that the average freight rates upon our American railways are by actual comparison lower than in any

other country in the world, and lower than ever before in this country. This fact is evidenced by the following table:

*Average freight charges per ton per mile.*

[Prepared by Mr. H. T. Newcomb, at the request of Senator Foraker, for use of the Interstate Commerce Committee.]

	United States.	France.	Germany.	Austria.	Hungary.	Italy.	Russia (European).
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
1870.....	1.89	1.78				<sup>a</sup> 1.95	
1880.....	1.23	1.68		1.81		1.97	
1890.....	.94	1.54	1.34	1.39	1.38	1.64	1.14
1891.....	.90	1.51	1.33	1.36	1.28	1.63	1.06
1892.....	.90	1.51	1.33	1.33	1.25	1.63	.95
1893.....	.88	1.48	1.32	1.32	1.25	1.63	.99
1894.....	.86	1.47	1.32	1.31	1.25	1.63	1.00
1895.....	.84	1.45	1.32	1.30	1.24	1.63	.98
1896.....	.81	1.44	1.32	1.32	1.27	1.63	.95
1897.....	.80	1.42	1.29	1.27	1.26	1.63	.89
1898.....	.75	1.39	1.27	1.23	1.25	1.60	.86
1899.....	.72	1.35	1.24	1.22	1.27	1.58	.87
1900.....	.73	1.32	1.22	1.24	1.25	(b)	.84
1901.....	.75	1.33	1.23	1.24	1.26	(b)	
1902.....	.76	1.33	1.22	1.26	1.24	(b)	

<sup>a</sup> For 1872.

<sup>b</sup> Data not comparable with earlier years.

Second. That the average pay of the laborers on our railways is higher than in any other country in the world, and at the risk of being somewhat tedious I quote the following table of figures compiled by Mr. Slason Thompson for submission to the Senate Committee on Interstate Commerce. The average daily pay of laborers is as follows:

United States.....	\$1.31
United Kingdom .....	.71
Germany (state railways) .....	.57
France (state railways) .....	.52
Belgium (state railways) .....	.48
Italy (state railways) .....	.42
Russia (state railways) .....	.29
India (state railways) .....	.08

The average pay for the higher classes of employees, such as engineers, firemen, conductors, etc., is relatively much higher in the United States than in the countries named, as shown by the following table:

*Average pay, per day, of several classes of railway employees in the United States, Great Britain, and Belgium, 1903.*

	United States.	Great Britain.	Belgium.
Enginemen .....	\$4.01	\$1.62	\$1.01
Firemen .....	2.28	.91	.72
Conductors .....	3.38	1.22	1.08
Other trainmen .....	2.17	.85	.72
General office clerks .....	2.21		1.11
Station agents .....	1.87	1.01	1.38
Machinists .....	2.50	1.50	.85
Carpenters .....	2.19	1.22	.84
Switch and crossing tenders and watchmen:			
Men .....	1.76	.91	.48
Women .....			.16



Third. That of the total earnings of the American railways 40.08 per cent goes for labor and 23.04 per cent for capital; in England, 27.03 per cent for labor, 38.02 per cent for capital; in Germany, 35.04 per cent for labor and 35.02 per cent for capital. It was also shown that for the year 1904 the pay of employees in the United States has absorbed more than 42 per cent of the gross earnings.

Fourth. It was also shown that, according to the census and interstate-commerce reports, the net income in the United States from operation of agriculture for 1900 was 8.04 per cent; from manufacturing, 19.03 per cent, while the railways have only yielded 4.06 per cent. It is also true that the farms and manufacturing enterprises owe their prosperity to cheap, rapid, and efficient railway transportation.

It will hardly be contended that 4.06 per cent is an excessive sum for the railways of the United States to earn upon their value, appurtenances and equipments. To reduce rates below that point would be in direct conflict with the rule of law laid down in the case of *Chicago, Milwaukee and St. Paul Railway Company v. Minnesota* (134 U. S., 418), in which the court said as follows:

If the company is deprived of the power of charging reasonable rates for the use of its property, it is deprived of the lawful use of its property, and thus in substance and effect of the property itself, without due process of law and in violation of the Constitution of the United States, and in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of equal protection of the laws.

Fifth. That the average capitalization of the railways per mile in the United States is \$61,360, as against \$127,696 in other countries.

Sixth. That instead of the ownership of the railways being concentrated into only a few hands, the report of the Interstate Commerce Commission shows that for the year 1904 the number of stockholders amounted to 327,851, and the owners of railway bonds amounted to about 700,000, making a grand total of more than 1,000,000.

Seventh. That to place the rate-making power in the hands of the Interstate Commerce Commission would logically result in the adoption of an arbitrary mileage basis for fixing freight rates, which in turn would result in the erection of a Chinese wall around each industrial center, beyond the bounds of which it would be impossible to do business. If the home consumption, therefore, did not exceed the production, then the surplus would be left practically worthless in the hands of the producers. There would be no further stimulus to individual enterprise and no structure upon which to build a great metropolis. Those we have would soon languish for want of sufficient territory to sustain them. In Germany an order has been made which provides that corn should only be shipped a limited distance

from certain localities, thereby making it impossible for one locality to compete with another nearer the point of production. The farmers of the great grain-growing section of this country surely can not be aroused to any enthusiastic support of a proposition which would probably or even tend to lead to such results.

It has also been argued with great force that to confer the rate-making power primarily upon the Interstate Commerce Commission would impose upon that body a burden which no seven men, even though they be Americans, could perform under any condition; and that the centralization of the power in the Interstate Commerce Commission to make rates for 210,000 miles of railways, valued at more than \$15,000,000,000, traversing every state in the Union, employing about 1,500,000 of the people (who in turn have dependent upon them at least 7,000,000 more of people), with a gross income of \$2,000,000,000, would be such a revolution in our form of government as to threaten untold and inconceivable complications, and possibly to open the door for gigantic frauds in the administration of the stupendous network necessary to keep the vast system in operation. The results of many of the above findings are not only highly satisfactory to the American people, but are really creditable to their manhood, vim, and energy. Indeed, we are fully justified in felicitating ourselves somewhat upon these conditions, and are to be pardoned for boasting of our achievements. Notwithstanding all this, however, there remains a spirit of unrest and discontent with existing conditions, and the masses of the people are still clamorous for some radical change. Wherein, then, lies the evil? Certainly not in extortionate freight rates; but where? That the practice of granting rebates to private individuals, corporations, and favored localities has been an evil, whose baleful effects were seen in the ruin of the rival competitors of these favored individuals and localities, has been admitted on every hand; under this system gigantic trusts and enterprises have been formed, and even the railways themselves have oftentimes been the unwilling victim of this species of evil so destructive of individual enterprise and so hurtful and ruinous in its results to the country at large.

That the evil complained of largely, if not altogether, lay in these practices has been fully shown, and while it may be true that under existing laws, if strictly enforced, this evil might be wholly abated, still in view of the general complaint and the failure heretofore to uproot it, it is highly proper that Congress enact legislation so stringent in its requirements as to destroy at once and for all time any practice which hampers the American citizen in the exercise of his right to engage upon equal terms with his neighbor in the pursuit of his chosen and lawful vocation. That the private-car system should likewise be regulated is also generally admitted, and it seems that

public sentiment is fast crystalizing around these two propositions as a present solution of this vexed question. Is it not sufficient at this time, in view of these facts, to go that far and await the result? If the evils complained of do not then disappear, other and further legislation may be enacted in the future. The American people have always been noted for their conservatism, fairness and patriotism, and in this hour of popular clamor there is danger of flying from only imaginary evils to those we know not of. [Applause.]

Mr. SMITH, of Vermont. I move that the thanks of this convention be extended to the Hon. John V. Smith for his most instructive address and that it be printed in the proceedings of this convention.

The motion was carried.

The PRESIDENT. The next business in order is the report of the committee on grade crossings.

Mr. CHADBOURNE, of Maine. It was urged upon me by several for the purpose of having some report on grade crossings that that report should be gotten into the hands of the secretary at the earliest possible moment, and I took it upon myself to confer so far as I could by letter with the different members of the committee and to follow out the suggestions gathered by those letters, and I prepared that report and also attached to it a list of the different members of the committee, with their post-office addresses, and sent it to Brother Kilpatrick, who was next on the list. It seems that he very promptly concurred in the report and sent it to the next name on the list, but the fate of that report I know not of. [Laughter.] I know of no suggestions that may have been made, but I have here a copy of that report, which I will submit to this association.

#### REPORT OF THE COMMITTEE ON GRADE CROSSINGS.

The dangers of crossings at grade are well understood by everyone who has anything to do with travel or transportation on or about railroads. How to do away with them is the question. We understand the evil, what is the remedy?

To separate *all* grade crossings is practically impossible. To arbitrarily decree that no grade crossings would be allowed in future construction would seriously retard, if not prohibit, the development of sections now awaiting the coming of the sadly needed railroad line.

In densely populated areas the railroads have large earning power and the municipalities have large valuations for taxation. Here the remedy is more strenuously demanded, easier to apply, and less of a burden to parties in interest, reasonable expedition being the essential, as applied to all the grade crossings in the given locality. A good deal is being done and much more in preliminary process. The figures involved are almost appalling.

It is the grade crossing in the sparsely settled district, where earning power of the road is comparatively small and the municipality low in valuation for purposes of taxation, that is the most perplexing problem.

In some states there is statutory provision that the expense may be divided between the state, municipality and the railroad. In many other states such a proposition would be impossible of enactment into law.

Nearly every grade crossing has its peculiar conditions and calls for its peculiar treatment.

The old common-law injunction—"Stop!" "Look!" "Listen!"—put upon the traveler in the highway, would largely reduce the number of accidents. Signs with these words written on them placed at such crossings would add to safety.

Gates and flagmen have their place and are of benefit, but are far from infallible safeguards. The appearance is that such guards make the traveler on the highway less careful for himself. The cost of installation and the expenses of maintenance often represent a larger sum than the interest on the cost of separation. The investment of the principal sum would eliminate all danger.

Recital of individual instances, observations, or experiences might be made far beyond the limits of this report.

Considering all the varied conditions referring to railroad companies as well as to municipalities, and their ability to meet the requirements, financial and otherwise, incident to separation of grades, we beg leave to offer the following suggestions:

First. That there should be some tribunal in each state having state-wide jurisdiction in matters of railroad crossings, to the end that the whole matter be viewed from the standpoint what can best be done and how and when.

Second. Such a tribunal should have authority to change highways to facilitate separation of grades, assess damages, apportion the cost, determine matters of construction and pass upon the final acceptance of the work.

Third. If it should be thought that the powers named are too broad, then it will be easy to provide an appeal to some court or a committee to be appointed by the court, whose decision should be final.

Your committee throw out these few hints hoping that they may provoke discussion. Perhaps the association may deem it wise to pass a memorial on the matter, a copy of which may be sent to the different state legislatures, through state commissioners in states having commissioners, but reaching all states in some way.

Mr. CHADBOURNE, of Maine. I will be allowed to say in addition to this, largely owing to my own personal observation, and owing largely to what I believe to be the largest interest of the largest number, that it is the duty of this association to enforce upon the different states the absolute necessity of having some tribunal within their own limits, under the discretion and the guidance of their own legislature, who shall have authority in these matters. All this in consideration of the belief that I have that there are not railroad commissions enough in the United States; that several of the states are not up to the particular consideration of the benefits of the railroad commissions to the states, and, I submit to the members of this association, who could have more extended authority, who could carry provisions looking to the separation of grades or the removal of dangers at crossings, than men chosen in their several states to act in such capacity. It looks to me that it is not an interstate provision which is the question that addresses itself to local conditions.

Now, there are many railroads that are really too poor to do this

work. It is absolutely impossible for many railroads to do things which they themselves feel ought to be done, because their earning power is so small; and yet those very railroads are doing a mighty service to their community, and any well-organized body, any body of men—and it can be said without the least idea of boasting—who are considered by their constituency to be competent to act as railroad commissioners certainly could exercise authority in that direction profitably not only to the communities, but to the states and to the railroads.

I want to say frankly here that I am not one of those who believe that there is such an almighty issue between the railroads and the people as many think. I am one of those who believe that the railroads of this country have been its most profitable servants, and in our state, where we have jurisdiction in these matters, I want to say, by way of illustration only, that we have been met more than halfway in every proposition we have made, and what is true of our state I believe to be true of every state in the Union. And on this line may I be permitted to submit a single illustration? And I admit the danger of submitting only single illustrations, because in many of our judgments we are apt to come to a conclusion from too narrow observation. We are apt to think that one or two instances should guide us in the making up of our judgments when, in fact, we have not investigated far enough so we may be able to see what is the best for the greatest number.

Now, the railroads in the State of Maine are of comparatively low earning power. This was a very dangerous crossing. It was at the mouth of a grade—a down grade—where there were a great many trains and where the view of the railway track is obstructed on both sides. The town through which it runs is a town very low in valuation for taxation purposes, and the railroad is a railroad of comparatively low earning power, although it is a main artery of our state. When we first made the proposition for the separation of this grade the engineers of the company said it would cost at least \$12,000 to bring it about. I did not believe it, and I made the suggestion that instead of using masonry steel posts could be used—steel bents constructed together instead of masonry—and it would not cost half of \$12,000. The proposition was submitted to a bridge company, and this is a blueprint. And I want to say here that that crossing was separated at a cost of \$4,800. No one was burdened and no one was harmed; everybody was benefited. Now, I only urge it as a suggestion of one instance, but I want to say that I know of more than fifty other instances where this same economy could be carried into effect and the same benefits result, and I simply submit this blueprint and will let you look it over. It is only a suggestion and it is only one instance.

Now, if you have in every state a body with authority to make suggestions and then to carry them out, a body of men who will alike consider the interests of the public and the railroads, who will take into consideration all of the conditions, the earning power, why, I think we will be surprised to see the eliminations of dangers in the aggregate all over this country.

I have spoken longer than I intended, and I do not blame you if you cross me for my much speaking, but I have only thrown out a few suggestions, and I hope that the matter will be thoroughly discussed to the end that we may come to some understanding and that these local matters may be placed in the hands of local authorities throughout the different states, men of breadth and of capacity, who will consider all the conditions of all the parties concerned. [Applause.]

The PRESIDENT. Gentlemen, you have heard the report of the committee. What is your pleasure?

The motion to adopt the report was carried.

The PRESIDENT. The report of the committee on railroad taxes and plans for ascertaining fair valuation of railroad property is now in order.

Mr. STAPLES, of Minnesota. I will say that I was a little more fortunate than Brother Chadbourne in my report, but I pursued a different policy and sent a copy of this report to each member of the committee, and a majority of the committee signed the report and returned it to me. The printed report I have not read, but unless it is more correct than the signers that are included it is in error, for the majority of the committee signed the report.

One other word of explanation. In the report is found a statistical table indicating something pertaining to the mileage, the rate per mile for taxation paid within different states, and the methods of taxing the railroads or railroad property in different states. In this table there may be some errors, but it is compiled from the best information obtainable and I think is sufficiently correct for the purpose designed.

One more remark, and that is that anybody who feels like differing from anything in this report need not feel for a moment that he will hurt the feelings of any member of our committee.

*REPORT OF COMMITTEE ON RAILROAD TAXES AND PLANS FOR  
ASCERTAINING FAIR VALUATION OF RAILROAD PROPERTY.*

This subject is approached by your committee with much hesitancy, and the report will be brief.

As directed by resolution adopted at the last annual convention, your committee selected five officers, not railroad commissioners, charged with the duty of

appraising the value of railroad property in their respective states; said five officers, together with our committee, to constitute a joint committee for the purpose of reviewing and criticising the result of the valuation of railroad property undertaken jointly by the Interstate Commerce Commission and the Census Office.

The following gentlemen were named:

Hon. George E. Priest, chairman of the state board of equalization, Albany, N. Y.

Hon. Charles C. Black, member of the tax commission, Trenton, N. J.

Hon. Charles Weston, state auditor and ex officio, member state board of equalization and assessment, Lincoln, Nebr.

Hon. N. S. Gilson, chairman of the state board of equalization and assessment, Madison, Wis.

Hon. Parks M. Martin, member of board of tax commissioners, Indianapolis, Ind.

A portion of this joint committee met in Washington for the purpose of reviewing this work, but as the report was not published and was not at the time of preparing this report, it is not possible to make extended, fair and intelligent criticism.

From such examination as could be made it is clear the work will prove of value. The valuation when made will be more for the purpose of fixing the commercial value of railroad properties than for any other use. Necessarily the data comes largely from information furnished by the various railway companies voluntarily. In many cases there will prove a great variation, owing to the different methods of bookkeeping used by the different companies. The committee is of the opinion that the estimates and data furnished in the proposed report, together with the detailed account of method adopted in its preparation, will furnish sufficient data to aid each state to determine the value of its own railroad property with an authority not heretofore possible and in a manner demonstrable to the satisfaction of any court. This has heretofore been very difficult. What is most needed is not only figures that can not be met, but figures which can not be even attacked. Your committee is of the opinion that this valuation will prove a great aid to all the states.

In treating the subject assigned this committee it will be recognized that there are three distinct purposes for valuing railway properties, viz, for taxation, for fixing rates, and to determine the commercial value. We are mostly concerned in the first two, and a careful examination of the methods used in most states shows that the commissioners have little to do with taxation. There seems to be but two questions to treat. One is, "the best means of taxing railroad properties," and, second, "the best means of determining the fair valuation of the properties." At this point it may be said, in passing, that there are those who advocate the plan of "no tax on railroad property;" this upon the theory that it is impossible to impose a tax upon the railroads without necessarily increasing the rates of transportation, and thereby the people pay the tax in the end. This theory may be dismissed with the statement that the people as a whole insist that the companies pay their fair share of the public burdens. Again, in most states the constitution requires that all property shall bear its fair share of public taxes. We will assume that practically all are agreed that the railroad properties should bear a fair share of the public taxes. What we are to consider is how to best reach that end. To show that this question is the most difficult of solution of any, we have selected a recent year and offer a table showing various states, the taxes paid per mile of road within that state, and the basis upon which the state imposes the tax, or, in other words, the manner of taxing the railway property.

State.	Taxes paid per mile.	Basis of taxation.
Alabama.....	\$183.00	Taxed on the ad valorem basis; apportioned to the different counties and collected locally, applying the local rate, thus requiring a company to pay several rates.
Arkansas.....	139.26	Taxed on the ad valorem basis; valued by the railroad commissioners and apportioned to the various counties for collection.
California.....	250.81	Method not known.
Colorado.....	240.44	Do.
Connecticut.....	1,006.78	Pay a fixed percentage on the value of the stock and funded and floating indebtedness, as fixed by the state board of equalization.
Delaware.....	202.97	Pay 10 cents per passenger and a certain percentage of the net earnings, or may pay a fixed percentage of the gross earnings.
Florida.....	139.12	Pay upon the ad valorem basis.
Georgia.....	107.60	Do.
Idaho.....	197.95	Do.
Illinois.....	420.63	Do.
Indiana.....	395.49	Do.
Iowa.....	164.14	Do.
Kansas.....	251.63	Do.
Kentucky.....	277.01	Do.
Louisiana.....	253.63	Method not known.
Maine.....	167.77	Taxed upon the gross-earnings basis, ranging from one-fourth of 1 per cent to 8½ per cent, according to earnings per mile.
Maryland.....	278.79	Taxed partly upon the ad valorem basis and partly upon the gross-earnings basis.
Massachusetts.....	1,366.32	Taxed upon the ad valorem basis.
Michigan.....	167.60	Method not known.
Minnesota.....	216.52	Taxed upon the gross-earnings basis.
Mississippi.....	166.86	Taxed upon the ad valorem basis.
Missouri.....	188.20	Method not known.
Montana.....	105.26	Pay upon the ad valorem basis.
Nebraska.....	200.73	Method not known.
Nevada.....	143.53	Do.
New Hampshire.....	390.96	Pay upon the ad valorem basis.
New Jersey.....	728.91	Do.
New York.....	552.51	Pay upon the ad valorem basis, a license tax, and a franchise tax.
North Carolina.....	114.51	Method not known.
North Dakota.....	169.99	Do.
Ohio.....	\$23.29	Pay upon the ad valorem basis; also pay an excise tax of 1 per cent on the gross earnings.
Oregon.....	148.46	Method not known.
Pennsylvania.....	397.95	Pay upon the gross earnings.
Rhode Island.....	860.46	Pay upon the ad valorem basis.
South Carolina.....	145.33	Do.
South Dakota.....	94.31	Do.
Tennessee.....	232.20	Do.
Texas.....	104.97	Pay upon the ad valorem basis, same rate as other property pays; also pay a tax of 1 per cent on gross receipts from passenger earnings.
Utah.....	159.02	Method not known.
Vermont.....	143.44	Pay upon the ad valorem basis, but may pay in lieu of such tax a gross-earnings tax.
Virginia.....	194.80	Pay upon the ad valorem basis; also pay 1 per cent on the net earnings.
Washington.....	178.14	Pay upon the ad valorem basis.
West Virginia.....	222.28	Do.
Wyoming.....	140.37	Do.
Arizona.....	122.17	Method not known.
District of Columbia.....	577.61	Do.
New Mexico.....	161.72	Do.

It will be noticed the amount of tax as paid per mile of road in the various States ranges from \$94.31 in South Dakota to \$1,366.32 in Massachusetts. With few exceptions the states tax the railroads upon the ad valorem basis. It is interesting to follow the many methods used to assess this class of property. This shows that as yet there is no one method generally accepted by any considerable number of states as satisfactory. Space will not permit giving the plan of assessing in but a few states.

Take Alabama: The assessment is made by the governor, secretary of state, auditor, and treasurer.

Connecticut: By the board of equalization.

Florida: By the comptroller, attorney-general, and treasurer.

Kansas: By the lieutenant-governor, secretary of state, treasurer, auditor, and attorney-general.



Ohio: The county auditors of the several counties through which a railroad may pass constitute the board of appraisers and assessors for each railroad company. This board must assess the personal property of the road, including roadbeds, realty, and also credits, profits, reserves, etc.

Rhode Island: The railroad property in each town or city is assessed by the local authorities the same as all other property.

Kentucky: In this state the assessment is made by the railroad commission, the method being to first value all tangible property, determine the value per mile, and prorate it. In addition to this assessment a franchise tax is required. This value is determined by fixing the value of the capital stock and apportion this upon a mileage basis in proportion to the mileage proper within the State. From this valuation the assessment of tangible property is deducted, the remainder being the franchise value.

In Texas the value is determined by the commission by making an actual physical examination to determine the value of the property. In addition the state levies a tax of 1 per cent on the gross earnings from passenger traffic.

In Minnesota the roads are taxed upon the gross earnings; the rate is now 4 per cent.

Enough plans have been cited to show the utter lack of uniformity now prevailing among the states; furthermore, it must be clear that in most states the authorities making the assessment have little actual knowledge of the subject and must necessarily depend largely upon the data furnished by the various railway companies. In very few of the states is the work of valuing railway properties conferred upon the railroad commissions, when it would seem from the very nature of their duties they are the best equipped bodies to perform the work. These various methods employed may account in part for the wide difference in taxes paid in the different states.

Many contend for the so-called "market value of railroads" as the only true value. This is ascertained by taking the market value of its securities and outstanding indebtedness. Of course the stocks and bonds of all railroads are on sale and have a market value. It is easily understood that many factors enter to influence the market value of railroad stocks and bonds, which makes this plan entirely unreliable. Take, for instance, the stocks or bonds of any weak company which are either guaranteed or controlled by a strong company; their market value would far exceed the real value. The great trouble state legislatures have in solving railroad taxation is that the above is the usual plan pursued.

Another means of valuing railroad properties is to capitalize the road, using the net earnings as a basis, and the rate of interest to use for this plan is largely a question of conjecture and must be arbitrary in the end. A serious objection to this plan is that you are largely dependent upon the companies for figures, and those who have looked into the question know that different systems of bookkeeping materially affect the question of net earnings. As it is absolutely impossible to get accurately and operating expenses for any given state, it is necessary to get your values for the entire system and reduce this to the mileage basis, then multiply by the miles in a given state. This plan is likely to work a benefit to one state and a corresponding injury to another state.

In any plan proposed for valuing railroad properties locally the fact that most roads are interstate can not be overlooked, and as the authority is limited to the state line, the problem is made extremely difficult.

For want of a better plan, we suggest the idea of each state undertaking the work of making a thorough and scientific physical valuation of all the railway properties within the state, the same to be made by experts under the direction and supervision of proper authorities. This work will necessarily involve a

considerable expense, but its value, if properly done, would more than offset the cost. What is more, if it is thoroughly done, once in five years would meet all the requirements. To accomplish this work thoroughly, when finished the physical value should show practically what would be the cost of reproducing the property, such as right of way, terminals, value of tracks, construction, rolling stock (if an interstate road all equipment should be properly apportioned), material on hand, station buildings, etc., allowing for depreciation and renewals. To make the meaning comprehensive: Every character of property necessary to and pertaining to the operating of the road must be properly valued. To this it would seem proper to add a reasonable percentage for administration, discount on securities, interest during construction, and something for contingencies. This, summed up, will give the physical value of a given railroad or that portion of it within the state.

How much consideration should be given the question of "franchise" is largely a matter of opinion. Some contend the franchise has no value. As proof we are old that some states give free a franchise to any company wishing to parallel another line with a new railroad. While this may be true, it may be done as a public policy and still the franchise may prove to have a commercial value. It is probably not possible to determine the actual value of a franchise, but its market value can be approximated. In determining the value of the tangible property it must be remembered it is simply treated as adapted to railroad uses, but without reference to location of the particular road or its capabilities. Now, it seems fair to look up the market value of this same railroad by finding the value of its entire stocks, bonds, and other evidences of indebtedness, reduce this to the mileage basis, and multiply by the miles within the state; from this sum deduct the tangible value, and you have what is supposedly the value of the franchise. Just what the real value of a franchise is can not be accurately ascertained; certain factors, such as location of road, character of traffic, density of population, grades, earning capacity, etc., must be considered.

Once a railroad property is fairly valued, the worth of the work can not be overestimated. It can be used to show its commercial value and as a guide for taxation and rate-making purposes. We suggest that the most simple plan for taxing railroad property seems to be the gross-earnings basis, and use these valuations, made, say, once in five years, to determine if the rate used is requiring the company to pay its fair share of taxes, as required of other property. The rate can always be graded to meet conditions of the various companies. We have not forgotten that in many states the constitution would require changing to permit the adoption of this plan. Allowing that many states would prefer the straight assessment plan, would not greater justice be met if the valuation was thoroughly and scientifically made? Assuming that the property had been valued at its true value, if other property is assessed at one-third or one-half its value apply the same proportion to the railway property.

While it may not be a proper subject for treatment in this report, your committee begs to suggest that many railroad companies own stocks and bonds which produce a large revenue and which are not taxed, nor are they otherwise taken into consideration in treating with the companies. It is merely our purpose to bring this fact to the notice of the convention.

Mr. BROWN, of Pennsylvania. The necessities for the continuance of this organization are apparent when we look at the inconsistencies and incongruities which exist in the manner of taxing common-carrier corporations throughout the extent of this republic. In 1889 the first meeting of this association was held. The incongruities

which existed in other matters were very great, as were disclosed by the discussions which were had at that time. There has been something of an assimilation of laws in the different states as the result of these annual conventions, but when we read this report and find the great inconsistencies, the lack of fairness, and the liberal legislation in some states, as I said before, we can put ourselves where this association can yet accomplish something in getting uniform laws in the different states of the Union on this question of taxation. This committee has undoubtedly devoted a great deal of work to the duties which were imposed upon it, and it has brought before us a question which is exceedingly interesting, but the manner of the treatment of that question is not so clearly set forth in the report of the committee. What is the equitable way of taxing a railroad corporation? We came here on the Chicago and Northwestern Railroad from Chicago, passing through several states. We attempt to impose upon the Chicago and Northwestern, and all other railroads of the country, a scheme by which there shall not only be a uniformity of rates for the transportation of persons and commodities, but also uniform rules with reference to the construction, maintenance, and operation of railways, and yet we, representing the Union in part and in representing the different states of the Union, find an utter lack of uniformity in respect to the laws of taxation which we impose upon the railroad companies. Before we attempt to make a railroad company reduce its rates of transportation or establish more uniform laws with reference to the uniformity of rates of transportation it seems to me that it would be well for us to establish some plan by which there shall be greater uniformity in the matter of taxation. Now, in the state of Pennsylvania the plan there adopted has always commended itself as being to a very large extent fair, and I wish I could impress upon you just what that plan is, for I would like to have you consider it, because I think our duty and the main impression is that we should recommend to the different states of this Union a uniform system of taxation.

A railroad's capital stock in Pennsylvania by our laws is required to be appraised by the officers of the railroad company. It must be a sworn statement. The appraisement can not be at a less figure than the stock of the company is sold for in the market for a period of six months prior to the time the appraisement is made. That return is made to the auditor-general of the state. The auditor-general and the state treasurer are required to examine that report, and if, in their opinion, the assessment of the capital stock is too low—taking into consideration all the earning capacity or other matters that pertain to the financial condition of the company—they raise it to such an amount as in their judgment may be fair, and from that decision

of these state officers the railroad company is allowed to appeal to the courts as to the fairness of the appraisalment.

When the matter is carefully adjusted each railroad company is required to pay a 5-mill tax on such appraised valuation of its capital stock. That is one system of taxation. It occurs to me that it is based upon fairness, for of necessity it must depend largely upon the earning capacity of the railroad, which fixes the value of its capital stock.

The other plan is that the outstanding funded indebtedness and bonds of the company are assessed a 4-mill tax on their par value. The only question in that assessment of taxes is that the bonds which are owned outside of the state, of course, are not subject to state taxation, and sometimes, and probably frequently, bonds are methodically owned outside of the state.

The other tax which is imposed upon common-carrier corporations in Pennsylvania is an 8-mill tax on the gross receipts within the state. Now, to my idea, there is an equitable basis for determining the taxes which the common-carrier corporation ought to pay. But how different it is in other states where other practices may be followed, and they believe that their plan is just as equitable. I believe our plan is fair, but the conditions are so different which exist in various states that the demand upon us is imperative to recommend something which will be equitable. If you own a piece of property in one township of your county that is assessed at \$10,000 and in another portion of your county you own another piece of property that is of equal value but is assessed at \$5,000, you will see how inequitable it will be to levy a tax on the assessed values of that property; and yet, not only in railroad matters, but in other matters, such inequalities do exist. Now, what shall be our recommendation? What shall we do? We must not compel the railroad companies to do very much until we have something to recommend to them. I wish this convention could adopt to-day, or certainly by the next convention, such a system of taxation as will commend itself to the favorable consideration of the people and the railroad authorities throughout the land. In the empire state, with all its glorious achievements in the commercial world, with its eminent men, its statesmen, and its legislative body, yet in that state one of the systems of taxation is that the assessors in each assessment district in the state are at liberty to assess the railroad whatever their caprices demand they shall exact. That is ridiculous. The Pennsylvania Railroad property not only runs through Pennsylvania but runs through other states where different conditions prevail. This is an important subject, and I am glad it has been taken up.

Mr. ROBINSON, of Kansas. Is it not a fact that many of the other

business interests of Pennsylvania are taxed on the income system, the same as the railroads?

Mr. BROWN, of Pennsylvania. No railroad in Pennsylvania is subject to local taxation where such property is necessary or is needed in carrying out the purposes of a common-carrier corporation. If a railroad company owns houses in which its officers live, those houses are not considered essential for carrying on the business of the common carrier and are subject to local taxation. But all of the taxes on property—on the capital stock, on the bonds and on the gross receipts of these common-carrier corporations—are paid directly into the state treasury, and, as I said before, such property is not subject to local taxation.

Mr. GATES, of Connecticut. I have been very much interested in the paper read by Mr. Staples, and I feel that perhaps I might be allowed to say a word, inasmuch as the state of Connecticut, from which I come, is possibly spoken of as one of the states in which there is an exaggerated rate of taxation. I wish to call attention of the commissioners to the slip which has been prepared by the Interstate Commerce Commission, which really should be read in connection with the report given by Mr. Staples.

In that report it shows that the state of Connecticut assessed at 114 per cent of the commercial value of its railroads, which is 35 per cent larger than the assessment in any other state and 100 per cent larger than in the state of Wyoming. It appears as thirty-second in the list in commercial railroad values and it appears as eighth in the ratio of assessed values. Now, we still think we have the best system of taxation of railroads of any state, but to my mind there is no system of taxation that is perfect. I think you will all agree upon that. The lawyers here will perhaps remember Professor Robinson, who was the authority for a well-known work on elementary law. He lectured on taxation, and his lectures were mostly to the effect that the existing systems of taxation were imperfect. I asked him one day, "What, Professor, is the fair system of taxation?" And he said, "Young man, you ask a question that to my certain historical knowledge of the world has been asked for more than four thousand years and failed of answer." Now, this value of 114 that was placed on the railroads of Connecticut was placed there by myself as tax commissioner of the state of Connecticut, a position that I held the 1st of July, when I was transferred to the chairmanship of the railroad commission. Our system of taxation is very simple. No taxes are assessed on railroads except by the state of Connecticut. There are only two things to it—the fixing of the rate and the fixing of the value of the property. The rate is fixed by the general assembly of the state of Connecticut, and it is 1 per cent, and it is my judgment, and it is the judgment of those who are best conversant on property

values and tax values of the state of Connecticut, that if a 1 per cent rate were the uniform tax on all property of the state of Connecticut that as much would be realized as is realized by all their varied rates.

The state of Connecticut has adopted a 1 per cent rate on the value of its railroad property. Now, in finding the value of the railroad properties we take the ad valorem plan. It is simpler, of course, in a state like Connecticut, where there are no railroads like the Northwestern and the Burlington and all of your grand western roads. Still our roads extend into other states, and we have fixed that system as the proper method for finding the value. This value is arrived at by taking the bonded indebtedness, which we never find to be above par, but which we can find below par, and in case the actual market value is below par, add to that the value of the stock; so, adopting that rate, we find in the state of Connecticut \$120,000,000 of railroad property—the commercial value is about \$100,000,000. Now, that is a method of taxation which is simple and appeals to us, but I do not stand up here to advocate it, but I do agree with Mr. Brown that in looking through that report and in looking through this 7 per cent value of property taxed at 114, there is a problem that the railroad commissioners of New England and of the United States could well transfer themselves into a committee of the whole on the question of taxation and see if some plan of uniform legislation could not be recommended on that subject.

Mr. McNEILL, of North Carolina. I am interested in this report and in the discussion of it by the gentlemen from Pennsylvania and Connecticut for the reason that our commission is required by law to assess railroad property in our state (North Carolina). The states of Pennsylvania and Connecticut have wise tax laws, it seems to me, in this, that they segregate the source of taxation. The state of Connecticut imposes on railroad property a flat tax rate of 1 per cent on the total assessed value thereof. No other tax is levied on this in this, that they segregate the sources of taxation. The state of Pennsylvania also only levies a tax on railroad property for state purposes, and no county or municipality is permitted to levy any additional tax. In many of our states there are constitutional limitations which require that taxes be levied on all property, uniform and ad valorem, so that if any tax is levied on property for state purposes it must be levied on all property, and so also as to the counties and municipalities. This rule results in oppressive taxation as to certain classes of property. This is the law in our state, but this is not especially burdensome on railroad property with us, for the reason that this class of property is taxed on mileage plan, and there is necessarily very little railroad mileage within the limits of our municipalities.

Looking at this report, I find it states that North Carolina collects

\$114 per mile taxes out of the railroads. There are only a few states which collect less. The fact that railroads are taxed more per mile in one state than in another does not necessarily show that they are bearing any more or any less than their just proportion of the taxes of the state. If assessed upon the same principles, the railroads in some states would be found to be much more valuable than others per mile, and if the rate of taxation were the same the amount of taxes would, of course, be more or less per mile, as the railroad was more or less valuable.

Again, if railroads in all of the states were assessed on the same principles, the amount of the taxes would vary according to the tax rate, so that I do not think it a fact that the amount of tax paid by railroads per mile of road is any indication that the tax laws of any state are liberal toward railroad property or otherwise.

We can hardly ever expect to see the time when the amount of tax per mile of railroads will be the same, or approximately the same, in all of the states; but most of the states, I believe, tax railroads and other property on the ad valorem system, and in many states the assessment of railroad property is required to be made by the railroad commissioners, and it will serve a useful purpose if in our convention we can, by discussing the tax laws of the states, arrive at the proper rules for assessing this class of property.

In our state the principal part of our revenue is derived from the ad valorem tax. Our commissioners are required to assess railroad property for taxation, and, in doing so, we are directed to determine this by due consideration of the gross earnings as compared with the operating expenses of the railroads, and particularly by considering the value of the whole property as evidence by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property. We begin our work, then, by ascertaining the market value of stock and bonds and other securities on the 1st day of June, which is the day fixed for assessment of all property in our state. We also ascertain whether the market value of stock and bonds has been stable or fluctuating. We also refer to gross and net earnings to see whether the market price of stock and bonds is sustained by the earnings, and in this consideration we include the operation of two, three, or more years. We also consider the condition of the tangible property of the railroad from what we know by actual view of the property and by what we can find out from reports of the railroad company as to permanent improvements, maintenance of way and structures, and maintenance of equipment. In this way we think we can arrive at the actual value of railroads with about as much accuracy as the value of other property is arrived at. We think we have a fair assessment of this class of property in our state. The fact that rail-

roads only pay on an average \$114 per mile is attributable, in part at least, to the fact that we have a low tax rate—lower, we are pleased to say, than the tax rate in many of the other states.

Mr. ROBINSON, of Kansas. We find a difficulty staring us in the face in getting at an equal assessment of roads from the old charters granted in the early days. Calling the attention of this convention to the Illinois Central Railroad, which got its charter from the state with one of the first land grants, that land grant included the most valuable portion of country in the United States, and gave them a road extending in alternate sections over a wide area in that state, and are immune from taxation which the railroad derived from the title. The Santa Fe Railroad and others are on a different basis. Their grant was made taxable. Consequently that road, with alternate sections from 30 to 40 miles wide in the heart of Illinois, ought to be taxed with its land free of all taxation—ought to be taxed differently from the road that obtained a grant that was taxable. It makes a very wide difference as to the amount of taxes had on the road. Now, the Illinois Central pays, if I recall correctly, 7 per cent of its gross earnings in lieu of all taxes—pays no school taxes, no municipal taxes, no township, or no county taxes. When some change was wished to be made in the taxation of that road some years ago, I remember, while the legislature suggested that it might surrender that vested right and come on an equality with other railroads of the state, they stood on their original contract, and, if I understand rightly, to-day they are paying in that manner all of the taxes they pay to the great state of Illinois. These conditions have been existing right along in that manner and the state of Illinois has no power to change it. So you see, only to get at a uniform basis is the common need.

Mr. STAPLES, of Minnesota. In regard to this subject that we are on, I am frank to say that I did not expect any solution of this question. It seems to me, in line with the remarks of Mr. Brown and others here, that it has been made apparent that the subject will stand further consideration, and with that thought in mind, I move at this time that this report be referred to the committee having charge of this subject to be appointed for the next session to report in such manner as they see fit, and to recommend to this convention such plans as they may give us, and define a basis upon which to proceed, either for amendment, modification, or approval, and with that proposed plan I want to stipulate that I shall not in any event be placed on the committee. I have no more blood to sweat on this subject.

The motion was carried.

The PRESIDENT. The report is accepted and it is referred to the next committee. The next business in order that we will take up



is the report of the committee on amendment of the act to regulate commerce.

*REPORT OF THE COMMITTEE ON AMENDMENT OF THE ACT TO  
REGULATE COMMERCE.*

Mr. BURR, of Florida:

At the last annual meeting of this association the following resolutions were adopted:

"Whereas provisions of existing law do not adequately authorize and empower the Interstate Commerce Commission to properly correct and prevent unjust discriminations against persons and places, and enforce fair and reasonable interstate railway rates and charges; Therefore be it

*"Resolved, by the National Association of Railway Commissioners, in convention assembled at Birmingham, Ala., this 16th day of November, 1904,* That in accordance with previous recommendations, the Congress of the United States be, and is hereby, requested to so amend existing law as to authorize the Interstate Commerce Commission, on complaint that any interstate rate is unreasonable or unjust, and, after full hearing, to ascertain what rate is reasonable and just in the particular case and order the carrier to observe that rate for the future, subject to rehearing upon application of the carrier, when the conditions may have changed, the rate so prescribed to be effective unless enjoined by the court; and

*"Be it further resolved,* That the president of this convention appoint a committee of nine to go before the proper committees of Congress and urge the passage of this needed legislation, and that each Senator and Representative in Congress be furnished by the secretary with a copy of these resolutions."

In compliance with the instructions contained in the second paragraph of the above resolutions, your committee has discharged the duties assigned us, and now have the honor to report as follows:

The committee appeared in Washington in response to telegraphic notice that the Committee on Interstate and Foreign Commerce would hear us on January 17. Arriving there on the 16th, we called upon the Interstate Commerce Commissioners and conferred with them to ascertain their wishes and to secure their counsel; on the next day, the 17th, we appeared before the Committee on Interstate and Foreign Commerce of the House of Representatives, and were accorded a fair and respectful hearing.

Between the time your committee was appointed and the date set by the House committee for a hearing it was almost impossible for us to get an exchange of views or to formulate a proper and complete argument. Therefore when we went before the House committee we divided the time between the members present, each one presenting the matter as best he could in the time allotted.

We were asked a great many questions concerning matters of transportation, and were also asked which of the pending bills the committee favored. We declined to single out any particular bill, but confined ourselves to stating what we believed was needed, believing that as there were so many measures before Congress it would be best for us to adopt this policy and leave the committee free to report such a bill as in their judgment seemed to meet all requirements. One member of your committee, however, was asked directly whether he thought the Cooper-Quarles bill was sufficient, to which he replied "No."

In the meantime we had made arrangements to be heard by the Senate Committee on Interstate Commerce on Friday, January 20, and on that day

appeared and were given a respectful hearing, occupying all the committee's session which could be devoted to hearings. However, we were not able to quite complete our argument before them, and they agreed to appoint a day later in which to hear Judge Crump, of Virginia, in our behalf.

We were asked by Chairman Elkins, of the Senate Committee, why the commissioners did not formulate a bill of their own covering what seemed to them to be the necessary legislation. We replied that no authority had been given us to formulate such a bill.

It seems hardly necessary for us to dwell upon the fact that over five hundred commercial bodies, boards of trade, chambers of commerce, and shippers' organizations appeared before the committees of Congress at the last session, urging the necessity for a law which would give to the Interstate Commerce Commission necessary authority to properly and adequately regulate freight rates on interstate commerce, as this is well known to every member of this association.

There is no doubt that the most important question confronting the American people to-day is the passage of a bill by the Congress of the United States conferring ample powers upon the Interstate Commerce Commission to revise rates and regulations for the transportation of freight and passengers.

As President Roosevelt has well said: "The Government must, in increasing degree, supervise and regulate the working of the railways engaged in interstate commerce, and such increased supervision is the only alternative to an increase of the present evils on the one hand, or a still more radical policy on the other."

Therefore, we respectfully submit that the law should be so amended as to give the Interstate Commerce Commission the power:

First. To require all railroad companies, corporations, persons, and all common carriers engaged in interstate commerce to file all rates with the Commission, and to publish and post all rates and regulations for the information of the public.

Second. Upon complaint that a rate is unjust or unreasonable, to at once investigate the complaint, and if, after full hearing and investigation of all interests involved, it is found that the rate complained of is unreasonable and unjust, to prescribe in lieu thereof a reasonable and just rate, the revised rates and regulations to at once go into effect and remain in effect unless and until the court of review reverses it, and the law should require that all such cases be advanced to the head of the docket and given precedence over all other appeals, except habeas corpus proceedings, and should be heard and determined as soon as practicable after the filing of appeals, and that appellate courts should be required to establish such reasonable special rules and regulations for the speedy trial and disposition of such appeals as may be necessary or advisable to secure the prompt hearing and disposition of same.

Third. If, on complaint, or upon their own motion, it finds a carrier is discriminating against persons or places, by way of secret or preferential rates or other secret devices, to at once order the carrier to discontinue the discrimination and to conform to the published rates.

Fourth. To require that in computing rates for the transportation of property and passengers, the mileage of the shortest available practical route shall be used. No railroad engaged in interstate commerce shall charge more for the transportation of property or passengers between two points than the lowest rates between such points thus computed.

Fifth. And that no railroad or common carrier engaged in interstate commerce shall be permitted to advance or increase any rate or rates without first

submitting the proposed increased rate or rates to the Interstate Commerce Commission and receiving their approval.

Sixth. To require each railroad company or common carrier engaged in interstate commerce, on demand, to furnish any books or papers in the possession of said railroad company or common carrier, and a written transcript or copy of any paper in the possession of said railroad company or common carrier which may appear to the Commission as necessary to aid them in the discharge of its duty.

Seventh. The law should also give ample power to the Commission to make proper rules and regulations for the government of private-car lines, with the right to condemn charges made by such lines, and substitute in lieu thereof reasonable charges for same; to require the prompt furnishing of such cars for the movement and transportation of freight offered within a reasonable time after application for same.

Eighth. Section 4 of the act to regulate commerce is not as full and definite as it should be; therefore, should be so carefully amended that the many abuses growing out of the long and short haul may be corrected.

Ninth. That the amendments to the act should provide heavy penalties to be imposed for each day that any person or persons, railroad, railroad company, or common carrier refuse to obey any order, rate, rule, or regulation of the Commission.

Tenth. As no remedial legislation was enacted by the last Congress, we suggest that a similar committee to the one now reporting be appointed to continue this work before the committees of Congress.

Mr. BURR, of Florida. The majority of the committee is in accord with this report. Judge Neville, who is on the committee, is present and he can signify his position in regard to the report. I wish to call especial attention to section 4 for this reason, that some of the committee who have signed the report say they would rather not concur in the adoption of section 4 of the recommendations, which is as follows:

Fourth. To require that in computing rates for the transportation of property and passengers the mileage of the shortest available, practical route shall be used. No railroad engaged in interstate commerce shall charge more for the transportation of property or passengers between two points than the lowest rate between such points thus computed.

Now, in view of the decision of the committee in regard to that particular section, I want to ask the convention, before taking any action on the report as a whole, to vote upon section 4. Then I will ask the consideration of the report as a whole.

I had not intended to make any remarks, but, for the reason that some one has so industriously circulated certain literature among the commissioners upon the trip from Chicago to this place, I wish to call attention to one of the documents which has been handed to the membership of this association, evidently to influence votes against the proposition to enlarge the powers of the Interstate Commerce Commission. That is the statement of Mr. Walker D. Hines before the committees of Congress.

I dislike at all times to do anything that would seem to be an attack upon a gentleman who is not present, but his absence is not my fault, and I think it is eminently proper that the members of this association should know to just what extent they ought to credit Mr. Hines's statement before the committees of Congress.

In the reports of the Louisville and Nashville Railroad, which Mr. Hines was first vice-president of, for the year ending June 30, 1902, Mr. Hines swore to a statement of the valuation of the Louisville and Nashville property in the state of Florida to the comptroller of the State for the purpose of taxation at one figure. In his sworn report to the railroad commission of Florida for the same property for the same period the same official swore to a greater valuation of the Louisville and Nashville property. Early in 1903 the Florida railroad commission, after a hearing, issued an order on the Louisville and Nashville Railroad to reduce the passenger fares on their Pensacola and Atlantic division from 4 cents to 3 cents per mile. On the day before that order was to become effective they applied to the United States district court for a temporary injunction, and for the purpose of obtaining that injunction this same official, Mr. Walker D. Hines, swore to another figure for the valuation of the same property for the same period, and that figure, gentlemen of the convention, was over double either one of the other two sworn statements that he had made to the comptroller and the railroad commission of the state of Florida.

Now, I ask you if under the circumstances you can give credit to this statement of Mr. Walker D. Hines? Is it fair to take the statements of a person who will swear to any sort of statement of the same property for the same period to different people?

As I said before, I do not care to make any extended remarks, but simply want to call attention to this for the purpose of showing that the statement is not worth consideration.

Now, then, what I have said to you is a matter of record. If I had known that this matter was going to be handled in the way that it has been I would have been here prepared with the figures that Mr. Hines swore to, but while I can not give you the figures for each statement, they are as I have stated, and the last sworn statement for this property was over double either one of the other statements.

Mr. GATES, of Connecticut. I move that when we adjourn it will not be later than a quarter of 4.

Mr. STAPLES, of Minnesota. I move to amend that motion and to make our adjournment, when we make it, at 12 o'clock and convene again at 1 o'clock, and that we finally adjourn at a quarter of 4.

The PRESIDENT. The motion is to take a recess from 12 o'clock to 1, and that we finally adjourn at a quarter of 4.

The motion as amended was carried.

Mr. CHADBOURNE, of Maine. I will confess I want to preface my few remarks by saying that there is no railroad company or no railroad official that I know of who would be or could be held responsible for one single word I shall say. You may not believe me. I do not know, but I would rather you would. You may not believe me, but the fact is that I am no more a friend of the railroads than I am of the people, if there is any issue between the two. It has been my good fortune to see this great country grow almightily since I first commenced railroading, which covers a period of about fifty-five years. I have listened to the report, and I am free to say that I doubt if a single railroad man's name is attached to that report. An attack has been made upon a railroad man in his absence, covering a statement made by him before a committee of the Senate of the United States, where every one of them had all the opportunity to inquire about whatever question they saw fit, and so far as I have read the report, which has only been in a cursory way, he answered every one of them. Now, the criticism of that report is the fact that he made, under oath, different statements as to the value of his property upon different occasions. I want to know how, in the name of high heaven, he could do otherwise. I remember very well for a few years when every steel mill over this country was sending circulars to every corporation in the country and begging orders for steel rails at anywhere from \$18 to \$21 a ton. I remember very well that what is known as the United States steel trust seemed to take command of the situation and arbitrarily, and so far as I can see, without any reason, raised the price of steel rails from that point—we will say \$21 to \$22, if you want to—to \$42, and it was all done in a minute.

If Mr. Hines had been called upon to make a report of the value of his property at 12 o'clock on a given day he would have to have based that report on the value of steel rails, we will say, at \$20 a ton. If he had been called upon to make a report within twenty-four hours he would have been obliged to base that report on the value of steel rails at \$42 a ton. Now, let us trace that steel-rail proposition through a little further. What applies to the value of steel rails applies to many other supplies that go into the construction of the great railway systems of the United States. That price of \$42 a ton prevailed until somebody must have found out that they were paralyzing the construction of railroads in the United States. Consequently the price of steel rails was reduced from \$42 a ton to, somewhere around \$36 a ton, but the price kept dropping and it kept dropping until here only last year a very peculiar condition of things came under my observation. This is not the illustration or purpose that I had in mind, but I will say that if any railroad official had been called upon to make an appraisal of his property within the last ten years, or, if you will allow me, I will put it down to five years, he has never been

able to make an appraisal of his property, varying at times within a single month, without being obliged to vary his appraisal to some extent. That thing went on. Last year in my own state one of our best roads, that has done more for the development of our state than any other, commenced using 54 of its miles in combination with a foreign corporation, the Canadian Pacific Railroad. If they bought the steel they had to pay \$29 a ton for it, but if the foreign corporation bought it they could buy the same steel at the same mills, to be laid on the same lines, at at least \$7 a ton cheaper than our own native corporation could do it. Now, if such a railroad were required to make an appraisal of its line with steel rails at that price, what would have been its valuation? If the Canadian Pacific were obliged to make appraisal of their lines, including this same line, with the \$7 reduction on steel, what would have been their appraisal?

Now, these are facts. I never knew of Mr. Hines, except seeing his name in the list of railway officials in the United States, until I read his report, but I say he is entitled to fair consideration. Somebody said to Peter Plum: "If you love the Lord, the Lord will love you." Said he: "That is fair, by thunder." The same thing applies to Mr. Hines. You are not here, or no one is here, to say that Mr. Hines lied at one time or the other, in view of the fact that there is not a single supply that goes into the maintenance of a great railway system of the United States which may vary in price in a single day. Do you remember when we in the North—way up in the northeast corner, in the state of Maine—were buying coal at \$1.65 and \$2 a ton, and with a jump almost inconceivable we had to pay almost any price we could get it at—\$5, \$6, \$7, \$8; yes, \$10 a ton? That is only one of the items. Every single word that has been said with reference to rates upon this floor or by the Interstate Commerce Commission, so far as I have ever heard, has been in the line of reduction.

If the railroad company is obliged to pay \$10 a ton in less than six months from the time they can buy the same coal for \$2, is it not fair that they should be given some consideration and that the value of the great supply which goes into the management and operation of every railroad should be taken into consideration and they should be given the right under those conditions to raise their rates? I say, whatever is said by the gentlemen who want to give the Interstate Commerce Commission the rate-making power, that every word they say is in the line of reductions of rates. They say that you must give the same rate on the long haul that you do on the short haul. Did you ever hear a word said about how much it cost to haul a ton of freight? But that is not a fair basis. To put the proposition in broad lines, did you ever hear an assertion made that it cost so much, or that an engine, say a 20-inch engine, could haul so much freight between given points on a line, and that it could only haul much less

tonnage on another line? I only state it generally, but, gentlemen, these are all elements that should enter into the consideration of all these matters. The first engine that ever I had anything to do with was a little 30-ton engine, and even then we wondered what to do with the great thing on the line. It would not make a flue cleaner of our engines to-day. That engine cost \$36,300, and we can buy a good 20-inch engine to-day for somewhere about \$14,000. When I first went into railroading 10 tons made a loaded car. To-day we get 50 tons oftener than we do 10.

If I wanted to go into details, even within my limited capacity, I should consume more time of this association than I should feel warranted in doing, and in my remarks I intended to say nothing on this subject, but when the gentleman made the attack on Mr. Hines—whoever he is, whatever may be his capacity—made an attack upon a gentleman who appeared before that most intelligent committee—and I am willing to say that no committee on earth was better qualified to hear this than they were, more astute, more politic—but we will meet them fairly and squarely, and every word he said and which was said at that hearing is recorded in that report of the committee, which the gentleman tries to stultify here. Why? Simply because this gentleman made two or three or a dozen different statements of the values of his property, when, in the natural course of events, with only an interim of a week, he could not help, holding up his head before his God on oath, and saying there was a varying valuation of his property. In the doubling of his value applying to his lines in the state of Florida, any man who ever went into the state can only say he made an almighty mistake, and that is all. The day has long gone by when the producer is following his product to the market. He has now to intrust it to the care of the transportation company—and in this country in the honorable and mighty position which it holds among the nations to-day the great railroad systems have made mighty strides in the development of every enterprise and have brought this country to be the brightest and the best nation on the face of God's earth. I can not help thinking of the importance of this great nation and the almighty blessing it is to me as an humble citizen. If it had not been for the transportation companies of this country, could it have been made the greatest feeding nation and the greatest clothing nation on the face of the earth? Not for a moment. These great transportation companies themselves have overturned all the antediluvian theories upon which every monarchical form of government is based, in which there is pressure on population for subsistence. We have shown there is no pressure at all. We can feed all the countries of the world if they will only give us a chance, and the great transportation companies

which allow us to make a rate from the point of production of the great corn-producing countries to Europe have made it possible for us to take the place we have in the constellation of nations.

I know I am discursory in my remarks. Arguments force themselves upon me far faster than I can give them utterance, and I can only console myself in the fact that I am addressing a body of intelligent men, the chosen men of the several states of this great United States who are to represent them in those interests. While I may conflict with some few ideas, I can only hope I may offer some suggestion, that I may drop some word which shall set them to thinking, and, in the words of some one I heard here this morning, who seemed to be dwelling upon the fact that there was some demarcation between the interests of the people and the interests of the railroads—that I may drop some word which shall address itself so strongly to the individuals of which this association is comprised that they may endeavor to bring the great almighty elements together, to the end that we shall all be in closer harmony. [Applause.]

The PRESIDENT. We will now take a recess until 1 p. m.

Thereupon, at 12 m., the convention adjourned until 1 p. m.

#### AFTER RECESS.

AUGUST 17, 1905—1.15 p. m.

The PRESIDENT. The convention has under discussion the report of Mr. Burr, of Florida.

Mr. BROWN, of Pennsylvania. Just before the convention commences its business I would like to suggest that the chairman of the executive committee has been required to collect a considerable amount of money for Pullman services, dining cars, and for the Yosemite trip, amounting to something like \$10,000, and I do not like to handle that amount of money without having it verified; and I move you that the Chair appoint a committee of three for the examination of the reports of the receipts and expenditures of the executive committee. I have not yet made my report out, because all the collections have not been made, but I will try to make it out this afternoon so the committee can have it.

The motion was carried.

The PRESIDENT. I appoint the following as the auditing committee: Smith, of Vermont; Staples, of Minnesota, and McMillin, of Washington.

Mr. BROWN, of Pennsylvania. I wish to report that Mr. C. Loomis Allen had prepared a paper on street railways. The time of our convention is so largely taken up with other matters, and Mr. Allen not being here to present this paper, I ask that this paper be pub-



lished with the proceedings of this convention without any further action on the part of this convention.

The motion was carried, and it was so ordered.

Following is Mr. Allen's paper:

#### *PROBLEMS IN ELECTRIC RAILWAY OPERATION.*

The subject assigned to me by the chairman of your executive committee is "The construction and operation of street railways." There is no more interesting and fascinating problem than the local transportation facilities in the cities of this country. It is difficult to say whether it is the developing of something that moves, and in that manner resembles life, or whether it is a development in which every citizen of a municipality can not help but be interested, or whether it is the profit and money gain alone that makes local transportation facilities in our cities so interesting a problem. I do know that when one engages in the solution of these transportation problems, whether the results are successful and satisfactory or not, it is seldom that one ever leaves the field of street railway development until ready to retire from active life. The demands of the service from those engaged in solving difficult transportation problems require the closest application and study, and, at times, are exacting indeed. Notwithstanding these conditions, to-day we find in the United States the best brains, ability, and energy of American manhood engaged in the construction and operation of electric railway properties.

The successful results obtained from the efforts put forth in solving the local transportation problems are a record that every citizen can well be proud of. When we think that the transportation facilities in this great United States have been developed in the last seventy years, which is but the span of life allotted to man, and when we think of the commerce of this great nation, the development of which is promoted and made successful by improved methods of transportation; when we consider the vast amount of business transacted—and it is hardly necessary for me to go into statistics to this association; when we consider the sacrifice made by those men who had the courage, coupled with the financial ability, to "pioneer" and experiment in attempting to solve these transportation problems—and the development of electric railways has done much to promote increased and cheaper transportation facilities—those who are engaged in the construction and operation of electric railways may feel justly proud of the record made and can justly claim credit for their share of this splendid advancement in civilization.

Perhaps to detail the advancement made in the solution of local transportation problems during the past twenty years might not be entirely out of place at this time. In 1885 electricity as a motive power was the dream of the fanatic. In 1890 it was the demonstrated power, and in 1895 was the accepted power, adopted by practically all traction interests in the United States. With the adoption of electricity as a motive power animal traction and cable traction were, with a few exceptions, abandoned, and millions of investment in types of construction that heretofore had been standard and considered all that was to be desired were thrown away. With the adoption of electricity as a motive power came the demands of the public for increased speed, permanent track structures, better cars and equipments, more frequent service, and cheaper fares. Prior to the adoption of electricity as a motive power but few municipalities afforded the luxury of mechanical traction; the transportation facilities were confined to the slow, inefficient service afforded by animal power. The methods of operation, too, in days of animal traction, were not the precise, accurate,

businesslike railroad methods which followed swiftly upon the adoption of electricity. In the proceedings of the American Street Railway Association much discussion can be found prior to 1888 upon the diseases of the horse and the mule, the best method of feeding and caring for these animals. These were the great problems in that time in local transportation. Schedules were not maintained with the same accuracy that they are maintained to-day on the up-to-date electric railway. The care and maintenance of the animal motive power was a greater question, rather, than the operation of cars on schedules. The employees, too, in the days of animal motive power, worked longer hours, were not as well paid, were not as well uniformed, and did not and could not render to the passengers the uniformly polite service accorded upon any well-regulated and properly operated traction system of this day.

With the adoption of electricity there came increased earnings, but with this increase came not altogether increased profits, for track structures, which had heretofore been sufficient to carry the light horse car and its passengers safely and fairly comfortably, were found altogether too light and inefficient to transport the heavier rolling stock of electric operation. The 45-pound L strap rail of 1885 is to-day replaced by the girder and T-rail types, weighing approximately 100 pounds to the yard. Passenger cars of 1888, that were models of up-to-date transportation facilities of that time, having a body 16 feet in length and a seating capacity of 20, are wholly insignificant as compared with the 28-foot double-truck car of the present day. The methods of accounting in use during the days of animal traction were crude indeed, and it was next to impossible for the managers of different roads to make comparisons upon the cost of maintaining a railway and transporting the passengers thereon. In fact it was not until 1900, or some time after the adoption of electricity as the standard motive power, that we find the street railways of the United States distributing the expenses of maintenance and operation according to a standard system of accounts.

There are many matters that might be mentioned to show the wonderful advancement made in developing local transportation facilities, but the highest type of development to-day is that upon the subway division of the Interborough Rapid Transit. When the elevated lines of New York were equipped electrically it was conceded that rapid transit had been obtained, but passengers who spent an hour upon the then elevated electrically operated trains now can ride the same distance for the same fare and spend one-half that time in transit.

The public mind and the press have kept apace, and in some instances have kept far ahead of the proper development of local transportation facilities. It is an old story that greater demands are exacted from those who render the best and most efficient service, and this has proven only too true in local transportation questions. Service that was considered ideal ten years ago would be considered by the public to-day wholly inefficient. The question of franchise grants has received great consideration by the public, who demand and are entitled to so much in proper transportation facilities, and in many states to-day limited-term franchises and nonexclusive franchises only can be obtained by corporations desiring to engage in local transportation. The rights of municipalities are more closely safeguarded in these days of improved transportation facilities and lower fares than they were twenty years ago.

To-day not only is the question of limited-term franchises discussed and considered, but we find there are municipalities the governing heads of which are advocating the question of municipal ownership, not only of transportation corporations, but of all public utilities. For many years the question of municipal ownership as it pertained to the construction and operation of street-railway

systems was confined to a few whose ideas and views upon that subject were rather vague and not considered weighty by the general public; but gradually and steadily has the consideration of this important question increased until to-day it is one of the great questions that confronts the American people. Heretofore railway men have maintained that the question of municipal ownership was not one of great importance and that it was a matter that would care for itself, and as a consequence of this indolent spirit railway men, as a whole, know less of the real facts of municipal ownership and of the results obtained from the operation of municipal railways than most of the readers of our daily press. Now, those engaged in railway work know it is useless to say that it is not a live and active question. If a repetition of what has been said on a former occasion by me is permitted, so important has this question of municipal ownership become that it will receive consideration by both political parties at the coming national election. The question of municipal ownership, aside from its socialistic side, must be approached calmly and with careful consideration of all the questions involved. Municipal ownership under our institutions is quite a different proposition from municipal ownership under political institutions as they exist in England and Scotland. For some time some cities in England and Scotland have been operating the street-railway systems, as well as some of the other public utilities. The less conservative daily press and some prominent people in this country are constantly referring to the results of these municipally operated railways as an example of what we of American cities should do, not only to obtain better and cheaper transportation facilities, but also to reduce the burdens of taxation. The people of this great country are, to a very great extent, educated, influenced, and swayed to action by the press, and it is therefore important that the real facts and true results obtained from municipally operated railways should be made known to the public.

Much has been written and said by individuals and the press in favor of municipal ownership of railways, but a close scrutiny of the motives actuating the writer or speaker of these articles has in most instances revealed the fact that they were prejudiced by a desire for political power. On the other hand, much has been written and said against municipal ownership by persons who likewise have been biased upon this proposition by reason of their ownership and interests in railways. It is a good thing at times for the extremists on both sides of the question to express opinions as viewed by them. It is not always wise that judgment and final action should be taken upon these opinions so expressed. One of the fundamental principles of our form of government is that the will of the majority of the people controls. Therefore, to obtain a correct decision from the citizens of this country upon this question, a full knowledge of the real facts and results is necessary. It is to be regretted that in making comparisons between municipally operated railways and those of private ownership and of those operated by corporations that statistics, facts, and results used in making these comparisons do not take into account conditions.

The thing most desired now is a report of true facts and figures upon municipally operated railways, and this to-day can not be obtained. It may be presumption on my part to make a suggestion to this association, but I can not but feel that much could be accomplished in an association of this kind and by its members acting in their official capacity if the true facts, statistics, and results obtained from municipal operation of railways were procured and published in the proceedings of this association, as well as in the annual reports of the railroad commissioners in the several states. This report, when obtained and promulgated through the medium of the annual reports and of the press, would be authentic, and would do much toward educating the citizens of this country

upon this question of municipal ownership. Those interested in the construction and operation of electric railways would welcome with great pleasure any steps that might be taken by this association to procure the results obtained from municipally operated railways.

The PRESIDENT. Before continuing the discussion of the report of Mr. Burr, I think it will be well to take up the report of the committee appointed to fix the time and place of the meeting of the next convention.

Mr. McNEILL, of North Carolina. The committee recommends that Washington, D. C., be the place and that Wednesday, the 21st day of February, be the time of holding the next annual convention. I will say in that connection, Mr. President, that it was thought Washington would be a most admirable place to discharge the business of this association.

The PRESIDENT. The report of the committee is that Washington be fixed as the place and the 21st day of February, 1906, the date for holding the next convention of the association, and that the itinerary for the trip and entertainment be fixed by the executive committee hereafter to be appointed.

Mr. McMILLIN, of Washington. I move the adoption of the report of the committee.

The motion was carried and the report adopted.

(The date of the next convention was subsequently changed to Monday, April 2, 1906.)

The PRESIDENT. The report on powers, duties, and work of state railroad commissions will now be read.

Mr. SMITH, of Vermont. I wish to preface this report by saying that in the main it speaks my personal views of the subject rather than that of the entire committee. This happens from the fact that it was not convenient for the committee to meet prior to the drafting of the report, and I failed to secure from the individual members of the committee any expression of their views on the topic assigned us, although they were requested to furnish them. Requests to the various state commissions to furnish me with a synopsis of recent legislation also failed to elicit any information except in two or three instances. The result was that unless I drafted the report myself none could have been presented. I accepted the duty and therefore must assume the major part of the responsibility for the opinion expressed. Even after submitting a draft of the report to the members of the committee, with a request for suggestions in amendment or modification of it, I failed to secure any expression of divergent views which might have been incorporated in the report.

Since leaving Chicago five members of the committee have discussed the report, and in respect to the conclusion that questions the authority of Congress or state legislatures to delegate to the Inter-

state Commerce Commission or to state commissions the power to fix future rates for the carriage of freight the committee is divided. I have held, as stated in the admirable address yesterday of our distinguished president, that the fixing of future rates is a legislative function. Being so, I perhaps erroneously concluded that the legislative body can not delegate that power, but I am informed that the recent decisions of the Supreme Court hold otherwise. However, the main question is not whether the power to fix what future rates shall be is or can be conferred on railway commissioners, but rather whether such power ought to be conferred upon and exercised by railroad commissioners and the Interstate Commerce Commission. Upon this point your committee is divided, and, for the reasons heretofore stated, the report presents my personal views upon this subject, and not the views of the entire committee. It being too late to reprint the report, it must be presented in the present form, and discussion afterwards will bring out the varying views of those present. I say this in justice to myself and to my associates upon the committee. In other respects I think the members of the committee in the main concur in the report.

*REPORT OF THE COMMITTEE ON POWERS, DUTIES AND WORK OF  
STATE RAILROAD COMMISSIONERS.*

At previous sessions of this convention the report of the committee on powers, duties, and work of state railroad commissions has ordinarily been a brief résumé of the statutory powers conferred by the various state legislatures, and has stopped short of any discussion of how these powers and duties might be enlarged and the commissions strengthened and made more useful both to the railroads and the public. It seems to your committee that any repetition of these abstracts of the railroad-commission law in each of the several states will fail to be instructive or of any special interest to this convention. Most of us are more or less familiar with the powers conferred upon commissions in many of the states, and, if not, reference can easily be had to the published records of these conventions where these laws have been quite fully set forth for a number of years. The recent additions and amendments do not materially alter or enlarge the powers or duties of commissions, except in isolated cases.

If there be such important additions or amendments that have been made since 1902, then the attention of this convention can be directed to them by anyone present at the close of this report. For these reasons your committee will discuss in this paper other phases of the subject. It is quite possible that in doing so we may trespass upon the rights of way of other reports upon kindred subjects. But we think, upon the whole, that this report will be of more value to the convention if we do not confine it to the expression of the legislative will in the different states affecting railroad commissions, and thus merely repeat what has been said so many times in conventions held prior to this date.

A discussion of this subject within the narrow compass of a report to this convention must necessarily leave much to be said. More than 30 states are or may be represented here, each having its peculiar problems of railroad operation to solve and almost every one widely differing from every other in the authority conferred by legislative enactment upon the commissioners charged with the

supervision and control of the transportation lines within its borders. Some sections of our country are deeply interested in and vitally affected by the questions of rates and classifications and kindred problems, while in other localities these problems have long ago practically settled themselves and complaints of unreasonable charges and discriminations have become very few in number and unimportant. In the group of States composed of New England, New York, Michigan, Ohio, Pennsylvania, Virginia, Wisconsin, and Kentucky, the powers, duties, and work of railroad commissions have little to do with rate making or classifications.

Those commissions are largely engaged in supervising the physical condition of railroads; the operation of trains so that the safety and convenience of the public may be subserved; the abolishment of grade crossings; the approval of issues of railroad securities; the approval of locations for railroads; protecting the public and employees by all sorts of safety devices; ordering and directing connecting carriers to furnish proper facilities for the interchange of traffic; inquiring into and investigating railroad accidents; receiving annual returns from steam and electric railroads; supervising the observance by railroads of the laws of the state and the provisions of their charters; making reports to the governor or legislature of the state; compelling by court proceedings the enforcement of orders; authorizing the condemnation of lands for railroad purposes; recommending changes in the method of operating a railroad or conducting its business; determining the conditions, when connecting carriers can not agree, under which carriers shall unite or cross, and adjusting complaints between individuals and railroad companies and correcting abuses from discriminations and overcharges.

These may be denominated the weak commissions. Not all of these powers are enjoyed by the commissions of all of the states which may be included in this group.

While the powers briefly enumerated above are not of vital moment to all of the patrons of the carriers operating in these states, they are important enough to justify the establishment and continuance of the commissions administering these duties, and in all instances these tribunals have frequent occasion to act as a buffer between the antagonistic interests of the carrier corporations and the public. As has been intimated, the need of the rate-making power is not so essential to the worth of these commissions as is doubtless the case in some other states; and if that power were conferred its exercise would be only infrequently demanded. Still, there is a more or less constant demand for the delegation of increased powers and authority to these weaker commissions. In many instances the provisions of law confer upon commissions created by the courts substantially the same duties that other legislation confers upon railroad commissions. These conflicting jurisdictions often result in defeating the accomplishment of desirable reforms which a railroad commission, clothed with absolute authority, might and would secure. And if all the states in this group conferred all and substantially the same powers upon their commissions it would greatly enlarge and simplify the administration of the laws relating to the regulation of carriers and make them all stronger and more useful to both the railroads and the public.

One important defect in the laws of these states is the difficulty which is experienced in enforcing the orders and recommendations issued by commissions. This question may be more properly discussed under the subject of "Delays attendant upon enforcing orders of railroad commissions," which will be treated in the report of another committee to this convention. But it will not be out of place here to suggest that there seems to be no valid reason why the orders and decrees of railroad commissions should not be given substantially

the same effect as the orders and decrees of courts of justice, subject always to the right of appeal, and thus make effective the judgments of a body of men by training and education competent to decide the issues in a given case, but in the absence of such legislation more or less impotent to carry into effect the correction of abuses they are designed to alleviate.

There is another feature of the statute law of many of our states on the subject of railroads that interferes to a considerable extent with the best results that might be attained from the work of railroad commissions, and that is the delightful ambiguity and uncertainty that surrounds the jurisdiction of railroad commissions to grant relief in certain cases. The establishment of railroad commissions was originally tolerated by the carrier corporations in response to a public demand for some kind of regulation. To minimize the effect of corrective legislation an influence was brought to bear which resulted in depriving the commissions of many powers naturally theirs and continuing in force laws which provided for a certain amount of regulation in other ways, thereby leaving the whole body of the railroad law in a more or less chaotic condition, and in many particulars uncertain and ambiguous. Doubtless in nearly all the states commissioners, in every worthy attempt to disentangle the snarl, have met with the untoward and unfortunate influences exercised by corporate power to defeat any measure calculated to give a cheap and speedy remedy for abuses. The more complex and tiresome and expensive the relief can be made to be, the less liability of attack from the public, because in cases against a railroad company the "public" is usually made up of a single individual or interest seeking relief for a particular injury. Rather than bear the expense and suffer the inconvenience of fighting the issue out single-handed and alone he offends yields to the wrong and bears it uncomplainingly.

Railroad commissions can perform a very valuable service in emphasizing, upon every proper occasion, the need of additional legislation and the simplification of legal remedies and in recommending specific measures calculated to give relief. Eventually legislatures will respond to the demand and a most progressive step will be taken that can not fail to be of advantage to the public.

Your committee does not mean by this that it is the primary business of railroad commissions to devise and urge legislation that shall establish authority in boards of railway commissioners which more rightly should reside in our courts of justice, or that shall grant to railroad commissioners powers the exercise of which may destroy the property rights of railroads or at least unduly burden them. There is a disposition in some states to apply to railroad corporations substantially the same policy that it is sometimes claimed railroads apply to the public in making tariffs and classifications, viz, to squeeze the other fellow "for all the business will bear." If it be a wrong for railroad corporations to found their tariff charges upon such a policy, then it is equally wrong for railroad commissions to attack the corporations with a view of destroying their ability to earn a reasonable return upon the investment in the business. In other words, there should be no confiscatory reprisals on the part of either the public or the railroads.

The principle of self-preservation will always prevail, and long-continued contentions will unsettle the relations of the interested parties, much to the harm of both. Railroad commissions should first of all be fair, just, and impartial in the discharge of their duties. It is difficult to do this if we owe our positions to the successful public clamor for relief from real or fancied grievances against railroad corporations, or, on the other hand, to the friendly influence of railroad corporations that secure our appointment or election. We shall all fail in the performance of our duties to the people, and to the railroads as well, if

we permit such considerations to bias our judgments or affect our decisions. But railroads have no right to object to reasonable and just laws placing the adjustment of grievances in the hands of railroad commissions, nor should objection be made to the simplicity, expedition, and inexpensiveness of the proceedings.

The commissions of the states of Alabama, Arkansas, California, Florida, Georgia, Illinois, Kansas, Louisiana, Minnesota, Mississippi, North Carolina, South Dakota, North Dakota, South Carolina, Tennessee, and Texas may be classed as strong commissions—not strong in the sense of possessing all the powers requisite to make an ideal commission, but strong in comparison with those which have been heretofore discussed. The main difference is the power conferred to establish rates for carriage of freight. In many instances this power extends to passenger rates, and in some to express, telegraph, telephone, sleeping-car and parlor-car rates. The exercise of these powers by men not highly expert in the business is bound to create friction between the public and the carrier, because the establishment of rates is a most delicate and intricate process, which can be successfully performed only by men thoroughly educated in the business of rate making and absolutely impartial and just in their reasoning and conclusions. It may be doubtful if in many instances the work of these rate-making commissions in some of the states is wholly successful. With the abolishment of rebates and discriminations and the proper regulation of the interchange of traffic between connecting roads very many of the present-day abuses of railroads will pass away and an adequate service at a reasonable rate will follow as a natural consequence. It is quite true that classifications and rates made by railroad corporations are sometimes offensive and occasionally unjust to the individual shipper. But interference by a commission constituted as most of our commissions are is quite as apt to result in more serious consequences to the whole system of intrastate transportation.

The evidence before the Senate Committee on Interstate Commerce of the Fifty-eighth Congress pretty clearly established the fact that to confer a rate-making power upon the Interstate Commerce Commission was at least unwise, if not unlawful. Just how the absolute control of the rates upon intrastate traffic by state commissions can be less unwise is not easy to be understood. The two cases are too closely alike to perceive much distinction between them. If the point is well settled that the powers conferred upon the Interstate Commerce Commission should not be larger than to allow that Commission to decide that an established rate is unreasonably high and to say what would be, in a given case, a reasonable rate, and that the decision of the Interstate Commerce Commission should be revisable in the courts, then should a state commission have any broader powers? Why should authority be given to a state commission to establish both classifications and rates and say arbitrarily what they shall be?

The vastness of the work is no sufficient reason for saying that it is unwise to confer this power upon the Interstate Commerce Commission, because the Government, by proper legislation, can create the necessary machinery to carry out the provisions of such an act. Nor is the problem any larger to the Government of the United States than to the smaller governments of any of our larger states. Some have said that the Interstate Commerce Commission, and also state commissions, should have power to decide what a rate shall be and that decision should give to that rate the effect of a legislative enactment. It is not clear how the legislative power can be delegated to a commission, and our courts would certainly have jurisdiction to review any action of a commission fixing a reasonable rate.



In the so-called Maximum Rate Case (167 U. S., 479), the Supreme Court used the following language:

"It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future—that is a legislative act.

"The power to prescribe a tariff of rates for carriage by a common carrier is a legislative and not an administrative or judicial function, and, having respect to the large amount of property invested in railroads, the various companies engaged therein, the thousands of miles of road, and the millions of tons of freight carried, the varying and diverse conditions attaching to such carriage, is a power of supreme delicacy and importance."

It is true that in some of the states the courts have held that the law delegating to railroad commissions the power of fixing rates is constitutional. The doctrine is that the legislative authority may delegate the power to perform certain quasi-administrative acts which can not, in the very nature of things, be performed by the legislature itself. In other words, it was held that the legislative authority has power to delegate to a railroad commission the power to say that a rate is unreasonably high; but it is a very serious question, and one not yet settled, whether the legislative authority has the power to delegate to any tribunal the power to establish what future rates shall be. And just here is the distinction between the right to say that a given rate is unreasonable and to say what rate shall be charged. The legislative authority can undoubtedly fix what the rate shall be, but in doing so it exercises its discretion by virtue of its power over and to regulate commerce. But it is extremely doubtful if it can delegate that discretion to any tribunal which it may create for the purpose of carrying into effect the laws which it enacts.

But even admitting the right of a commission to fix a rate, have the results which have been obtained by the exercise of this power been a satisfactory solution of the problem? Have not greater evils arisen because of discriminations between shippers, rebates of many different kinds and in many different ways, and the obstructions placed in the way of the interchange of traffic between connecting roads? With these evils removed and with every shipper treated exactly alike, would not very many of the evils that are now charged to rates pass away?

If state railroad commissions would seek legislation that would correct these abuses and secure the power to relieve the public from these wrongs the justification for the existence of these commissions would be complete. Railroad commissions often seek enlarged powers with a view of applying drastic remedies to satisfy a popular clamor against carrier corporations. This is unjust to both the public and the railroads, and can eventually result only in loss to both.

If Congress can not wisely or lawfully confer upon the Interstate Commerce Commission the power to fix future rates, the right of a state legislature to confer the same power upon a state commission may well be doubted. And if it is finally held that this power can not be delegated, then there has been an enormous waste of energy in attempting to do the impossible, and meanwhile other reforms, necessary and important, have failed of accomplishment.

Your committee do not care to express any absolute opinion upon this important question, but attention is called to it in order to present it for consideration. The limited time of this convention may prevent its full discussion here, but members can take the whole subject home with them and give it such thoughtful examination as its importance demands. We believe it is right in line with the subject of this paper, and at a time when the whole country is aroused over the question of railroad rates its consideration can not fail to be

of service to men engaged in the business of supervising the carrier corporations of the country. The limits of this paper preclude any extended discussion of the subject. It is deep and broad and long. It has been our purpose merely to suggest its difficulties and to promote a healthy inquiry into the mass of details which an intelligent investigation of the subject involves.

Massachusetts has given to her commission the power to designate the amount of stocks and bonds to be issued by steam and electric railroads. This power, particularly so far as it relates to electric railroads, should be conferred upon the commissions of all the states, or at least upon some tribunal. This country has never properly protected the issues of securities by the corporations which the various states have created by charter. Much of the present disturbance over rates and the operation of railroads would never have arisen if the corporations themselves had not been permitted to issue all the securities that a credulous public would buy. The result of overcapitalization compels railroad companies to charge for services much more than they otherwise would, and the fixed charges upon debt is so large that permanent improvements are omitted that otherwise would be made, and the safety and service rendered thereby increased. In the case of new electric roads it is the general custom to capitalize high, build the road out of the bond issue at a good profit to the promotor and contractor, and leave the stock to be sold at any price to those willing to invest in such hazardous securities. If our electric roads, and steam roads as well, were not capitalized for more than the actual cost of building and equipping them, the country would be vastly better off and our institutions more stable, our growth more permanent, and our development as a nation more secure.

Here is a matter that should engage the attention of state commissions with a view of securing legislation that will limit the issue of railroad securities. It is too late to prevent many of the evils that have grown out of the unlimited right to issue stock and bonds, but the future can be made secure.

The efforts of builders and promoters of electric railways to enrich themselves at the expense of the investing public should be restrained; the securities issued are often manifestly disproportionate to the value of the property after it is built and equipped. The positive result is that all classes of securities are likely to suffer, although they may not be of the character described. The capitalization and debt-creating power of railroads, both steam and electric, should be controlled by legislative enactment, and issues of stock and bonds should first receive the approval of some competent state authority, to the end that the securities issued may bear some reasonable relation to the value of the property represented thereby. Only one state, as far as your committee is aware, has regulated the issue of railroad securities by granting to its railroad commission the power to approve of stock and bond issues by railroad corporations. Massachusetts requires a steam or electric railway company to secure the approval of the railroad commissioners to any issue of stock or bonds; a certificate of the commissioners specifies the amounts of stock and bonds to be issued and the purposes to which the proceeds shall be applied, and no company may apply the proceeds of such stock or bonds to any purpose not specified in such certificate.

Such a law in every state would be of incalculable benefit to the whole country if fairly and conscientiously administered.

Another subject that should interest railroad commissioners is that of grade crossings of steam and electric railroads. Where railroad commissions are given the power to say by what method these railways shall cross each other, whether at grade or by underpass or overpass, the argument is always used by the electric railway corporations that the construction of such roads are

essential to the development of the particular locality, and that for financial reasons an underpass or overhead crossing is impracticable. Railroad commissioners all over the country have listened to this plea until now we have hundreds of grade crossings of electric and steam railways, at each of which positive peril awaits the passage of every electric car. The law of Connecticut absolutely prohibits these grade crossings. Most of the other states have made it the duty of the railroad commission to say how these crossings shall be constructed. The establishment of these crossings at grade are a constant menace to the safety of travelers on both electric and steam cars, and fearful accidents are recorded every once in a while. Railroad commissions should seek legislation that will stop the massacre of people at these crossings. The surest method is to prohibit them by law; but if that can not be achieved, then railroad commissions should turn a deaf ear to every attempt to increase the number of these crossings.

In conclusion your committee beg to state that these few observations are presented mainly to call attention to some important matters connected with the powers, duties, and work of state railroad commissions. It is hoped that discussion may bring out many other points of interest and value.

Mr. SMITH, of Vermont. There is, in addition to this report, Mr. President, a report submitted by Mr. Clausen, of Minnesota, covering an abstract of the railroad laws of that state, and recent legislation conferring additional powers upon the Minnesota commission, and Mr. Clausen, myself, and the other members of the committee would like to have that report published in the proceedings of the convention.

#### *ABSTRACT OF THE RAILROAD LAWS OF MINNESOTA.*

The first law enacted in Minnesota for the regulation of railroad companies was approved March 4, 1871. It provided for the appointment of one commissioner, whose powers and duties were restricted to inspecting the physical condition of railways and reporting his findings and recommendations to the legislature.

In 1874 a new law was passed providing for a board of three commissioners with power to make and establish a schedule of rates, which were to be deemed and taken in all courts as prima facie reasonable and proper.

No further important changes were made till 1887. On March 7 of that year the act known as the "general railroad law of Minnesota" was approved which, briefly summarized, confers the following powers on the commission:

To inquire into the management of the business of all carriers, to require from them full and complete information to enable the commission to perform its duties. If any change in the mode of operating a road or conducting its business is deemed reasonable or expedient in order to promote the security, convenience, and accommodation of the public, the commission is required to notify the company in writing thereof, and if its recommendations are not complied with it may bring suit in the courts to enforce such recommendations.

In case of complaint or on its own motion to inquire into the reasonableness of any state rate and, after hearing to decide what is a reasonable rate, and its order fixing such rate is made prima facie evidence under this provision.

The act provides adequate penalties for violations of the law.

New laws supplementary and amendatory thereto, enacted since the passage of this act, have increased the restrictions upon the carriers and broadened the scope of the powers and duties of the commission.

The effect of the laws now on the statute books is to confer authority on the commission as follows:

To prescribe a uniform system of keeping accounts.

To require annual reports from all common carriers in the state, prescribe the manner in which they shall be made, and require specific answers to all questions upon which the commission may need information.

To exercise similar supervision and control of express companies as of railroad companies.

To make thorough examination of all books, papers, vouchers, and accounts of common carriers whenever deemed necessary to determine if violations of law are being made.

To prevent the changing of any existing rates, charges, classifications, or rules except upon the order of or by the written consent of the commission; this to apply also to joint rates.

To waive formal hearing and allow the carrier, when deemed advisable, to put in an emergency rate for protection of its interests or those of its patrons.

To investigate the causes and circumstances of accidents, wrecks, or casualties and prescribe requirements to prevent similar occurrences.

To require the construction of loading platforms where necessary for loading grain, live stock, and other products from wagons to cars.

To require the construction of unloading platforms for unloading heavy machinery and other commodities.

To order the construction of track connections when deemed necessary at points where the tracks of two or more companies intersect.

To require the erection of station buildings and the establishment of station service at all points where justified by amount of population, traffic, etc.

To authorize the withdrawal of agents at stations where the business is periodical at such times as there is not sufficient business to warrant the service.

To prevent the removal of stations or depots, or abandonment of same, or withdrawal of agent without their written consent.

To require railroad companies, upon complaint, to provide suitable toilet rooms in railroad depots.

To require railroad companies to furnish and maintain gates, flagmen, or other safety device at dangerous railroad crossings.

To fix the location, terms, and conditions upon which railroad companies shall be compelled to build, maintain, and operate side tracks to grain elevators, warehouses, and manufactories located on land adjacent to the right of way.

To appear and prosecute proceedings before the Interstate Commerce Commission of the United States, upon complaint by a resident of the state, of any violation of the interstate commerce act, whenever they deem such complaint of sufficient public interest to justify such action.

To enforce all railroad and grain laws of the state, except in cases where special provision is otherwise made for their enforcement.

#### GRAIN DEPARTMENT.

As the title implies, ours is a "warehouse" as well as a railroad commission; its duties include the supervision of a system of inspection and weighing of grain at St. Paul, Minneapolis and Duluth, requiring the employment of over 200 inspectors, weighers, and other necessary assistants. The amount of grain inspected and weighed on arrival and "out of store" during the crop year ending August 31, 1904, was over 324,000,000 bushels. At the last session of the legislature hay and straw were added as commodities to be inspected.

There are also 1,700 local country elevators under their supervision, operating under license issued by the commission and subject at all times to their investigation.

The commission merchants of the state who handle farm products are required to procure licenses from the commission before transacting business and to furnish bonds. It is the duty of the commission to prosecute in the courts all violators of the law.

Much time and attention is necessarily devoted to this important branch of the work.

The commission has no jurisdiction over electric street railways, telegraph or telephone companies. A measure was introduced in the last legislature to place the last two named classes of public service under their jurisdiction, but failed of passage.

#### RATES.

The commission is not empowered to establish a schedule of rates; the law contemplates that in the first instance the companies shall make their own rates, and it provides that such rates shall be equal and reasonable; the commission has the power, either upon complaint or on its own motion, to investigate and determine the reasonableness of any existing rate or schedule of rates, and, if found unreasonable, to determine what is reasonable, its order therein being prima facie evidence of all the facts contained in the order and of the reasonableness of the rates as prescribed.

On failure of the carrier to comply with the order within thirty days after service, the commission may bring suit to enforce compliance; on the other hand, the company may within the thirty days appeal to the district court of the state from the order of the commission. Since 1893 to the present time every order of the commission prescribing reasonable maximum rates has, when contested, been affirmed by the state courts and finally by the United States Supreme Court.

Previous to the last legislative session the companies were permitted to lower any rate fixed by the order of the commission and could exercise that right, when so disposed, by filing a new tariff and giving thirty days' notice thereof. By a recent act, however, it is provided that thereafter they shall neither raise nor lower a state rate that is once in effect without obtaining the written consent of the commission.

Under the statute the commission has the power, in special cases after investigation, to authorize a greater charge for the short than for the long haul, the shorter being included in the longer, but in no case thus far presented have they been able to find any reason to justify the granting of such privilege.

#### TAXATION.

Taxes are collected from railroad companies upon the basis of their gross earnings accruing from business which begins and ends in the state and from the state's proportion of the interstate business. The tax rate is 4 per cent. The companies are required to file with the commission verified reports by February 1 each year showing total gross earnings for the previous calendar year, which are then certified to the state auditor by the commission, showing the per centum and amount of tax due thereon. The auditor makes draft on the railroad company for amount due and turns it over to the state treasurer for collection. Railroad taxes in 1904 aggregated \$1,911,184.43.

The business of the department has increased at least threefold in the past four years. The work of the past year has been of the usual routine character. Informal complaints, covering almost every conceivable phase of grievance, have

been numerous and constitute much the greater proportion of the department work. Their adjustment by the companies upon the findings, suggestions, and recommendations of the commission has proceeded with the usual favorable results.

The commission is rarely required to enforce its order in the courts. Appeals from their decisions are seldom taken, most of the questions of law involved in past legislation having been adjudicated. The relations of the commission with the carriers and the public are generally harmonious and satisfactory, its efforts to render impartial justice being recognized and appreciated. The physical condition of the roads, the character of the rolling stock and equipment and of the service rendered is, on the whole, first class and steadily undergoing improvement.

Mr. HILL, of Georgia. It has been well-nigh impossible, owing to official and private duties, to present my individual views to the chairman, who has just presented the report of the committee. Much of the report I heartily indorse. There are two propositions, however, which he has discussed from which I dissent. The first is:

If Congress can not wisely or lawfully confer upon the Interstate Commerce Commission the power to fix future rates, the right of a state legislature to confer the same power upon a state commission may well be doubted. And if it is finally held that this power can not be delegated, then there has been an enormous waste of energy in attempting to do the impossible, and meanwhile other reforms necessary and important have failed of accomplishment.

It is true that that language is somewhat modified in the following sentence, which reads:

Your committee do not care to express any absolute opinion upon this important question, but attention is called to it in order to present it for consideration.

Now, then, Mr. President, as far as at least some of the states are concerned, I think that question is well settled. In our own state it has been settled by the highest court in that state, and I believe by the Supreme Court of the United States—the power of a state commission to fix rates and to make rates, so far as I know. During the operation of that law for a quarter of a century it has worked well, and hence I can not bring myself to agree with the distinguished chairman of the committee on that proposition.

The other proposition was that there should be an appeal from the decisions of the state railroad commissions to the courts. Now, if it is meant by that that the carrier can have the right thereby, without more setting forth of reason, but simply desiring a *de novo* investigation, to bring up all the questions which have been gone into, then I am opposed to that proposition, Mr. President. I think it would utterly destroy the usefulness of all of the state railroad commissions.

If it is meant, however, that the carriers can appeal to the courts for an injunction as at present—which they can do now—where the rate is confiscatory, or go into the United States court where a federal

question is involved, then, Mr. President, that right is already given; but I understand from the report that he was discussing the first proposition. I simply wish to go on record as opposed to either one of those features of it.

Mr. BROWNE, of Florida. As a member of the committee on powers, duties, and work of the state railroad commissions, I also desire to dissent from some of the views expressed in this report. In doing this, however, I wish to say that it is through no fault of the chairman that his report was prepared without my views upon the subject. Mr. Smith sent me a copy of the report and asked me to consider it and submit any views which I might have that he might use the same in making up his report. At the time I received it I was quite busy with my official duties and unable to give it the attention that I desired; hence the chairman has had to prepare the report without knowing my views, and it is only since I started on this trip that I have been able to consider it carefully. As all the names of the committee are attached to the printed report, it will appear as if I assented thereto unless I make this dissent at this time, and as I do not agree with some of the conclusions therein drawn and some of the premises upon which he bases his conclusions, I desire to go on record as dissenting from certain parts of it, which I will read. There is this sentence:

The evidence before the Senate Committee on Interstate Commerce of the Fifty-eighth Congress pretty clearly established the fact that to confer a rate-making power upon the Interstate Commerce Commission was at least unwise, if not unlawful.

I do not concede that "the testimony established the fact that to confer a rate-making power upon the Interstate Commerce Commission was unwise," but, on the contrary, the testimony confirms my opinion that owing to the tendency of the federal courts to enlarge the class of traffic which they deem interstate, the only relief for the people is to give the Interstate Commerce Commission the rate-making power; and I particularly deny that it is unlawful to confer the rate-making power on the Interstate Commerce Commission or any other body created by Congress, and in support of my position I read from the opinion of Mr. Moody, Attorney-General of the United States, rendered May 6, 1905, and addressed to Hon. Stephen B. Elkins, chairman Committee on Interstate Commerce, United States Senate, in which he says, after citing a number of cases: .

The foregoing cases dealing with the right of state legislation to establish a rate-making commission, the clear analogy in this respect between their authority and that of Congress, and the case of the interstate Commerce Commission *v. Cincinnati, New Orleans and Texas Pacific Railway Company* (supra), establish beyond doubt the right of Congress to confer upon an administrative body the power to fix and determine maximum railway rates which shall control in the

future, by the execution in detail of a general rule enacted into law, as, for example, that the rates shall be just and reasonable and without discrimination.

In view of this opinion of the Attorney-General and the numerous cases which he cites confirming the right of the legislature to establish a rate-making commission, I can not agree to a report which states that "the testimony advanced before this committee of Congress was to the effect that such power was unlawful."

I desire also to dissent from those portions of the report which read as follows:

It is a very serious question, and one not yet settled, whether the legislative authority has the power to delegate to any tribunal the power to establish what future rates shall be. And just here is the distinction between the right to say that a given rate is unreasonable and to say what rate shall be charged. The legislative authority can undoubtedly fix what the rate shall be, but in doing so it exercises its discretion by virtue of its power over and to regulate commerce. But it is extremely doubtful if it can delegate that discretion to any tribunal which it may create for the purpose of carrying into effect the laws which it enacts.

But even admitting the right of a commission to fix a rate, have the results which have been obtained by the exercise of this power been a satisfactory solution of the problem? Have not greater evils arisen because of discrimination between shippers, rebates of many different kinds and in many different ways, and the obstructions placed in the way of the interchange of traffic between connecting roads? With these evils removed and with every shipper treated exactly alike, would not very many of the evils that are now charged to rates pass away?

If state railroad commissions would seek legislation that would correct these abuses and secure the power to relieve the public from these wrongs the justification for the existence of these commissions would be complete.

If Congress can not wisely or lawfully confer upon the Interstate Commerce Commission the power to fix future rates, the right of a state legislature to confer the same power upon the state commission may well be doubted. And if it is finally held that this power can not be delegated, then there has been an enormous waste of energy in attempting to do the impossible, and meanwhile other reforms, necessary and important, have failed of accomplishment.

Your committee do not care to express any absolute opinion upon this important question, but attention is called to it in order to present it for consideration.

I concur with the rest of the report and would have been very glad to have signed it, with the portions which I dissent to stricken out, but, as my name appears as indorsing the report as a whole, I desire to go on record as dissenting from those portions of the report which I have read.

Mr. SMITH, of Vermont. I ought to say, perhaps, that the names of the committee were attached to the report for the reason that none



of them upon receiving a copy of the draft expressed any dissenting views. I think, with the exception of Mr. Hill, of Georgia, who said he would be present here, but said that in some respects he should not be able to agree with the report, but did not say in what particulars he was in accord, that no one else expressed their views. As I stated in the preface of the report, the main question, as I view it, is not whether Congress or state legislatures can lawfully delegate the power to fix what future rates shall be, but whether it is wise for Congress to delegate that power, or for state legislatures to delegate that power. Upon that proposition my own personal views are that it is unwise, and in that respect I am divided from the opinion of the gentleman from Georgia and the gentleman from Florida.

Mr. FAIRCHILD, of Washington. I would like to refer to one sentence and ask Mr. Smith for a little practical information. The sentence to which I refer is this:

With the abolishment of rebates and discriminations and the proper regulation of the interchange of traffic between connecting roads, very many of the present-day abuses of railroads will pass away and an adequate service at a reasonable rate will naturally be the consequence.

The question I would like to propound is this: If the commission has not the power to fix rates, how can you compel connecting carriers to carry the goods on a joint rate of freight? I question that proposition very much. Where a joint rate had been abolished and we undertook to reestablish that rate we were met with this statement. It was on a question of coal. They said: "You are asking us to establish now a rate to this point, where we will get the benefit of a 20-mile haul. We do not propose to do it. We have coal beds on our line that we want to develop where we will get the benefit of a 400-mile haul."

Now, if you have not the power to fix the rate, I do not see how you can go further and say what proportion of that joint rate shall be shared by each. How are you going to regulate the question of the interchange of traffic?

That is a question that I would like to have explained by those of you who have dealings in that line.

Mr. SMITH, of Vermont. Mr. President, I am not any authority, and do not profess to be, upon rate making. I have no doubt, as stated in the report, that there are instances where railroads offer rates, particularly between individual shippers, that are unjust to the consumer. My position is that to give to state railway commissions the power to fix rates, especially to say what future rates shall be, will result to the whole people of the whole country in a worse condition than exists now. I think it is unfair to the railroad interests of this country to delegate that power to the state commissions, who might

do greater injustice to the capital employed in the transaction of railway business than good would result to individuals who may suffer at times in cases where such a state of affairs as has been described by the last gentleman exists.

Mr. ROBINSON, of Kansas. The question seems to be now on the equity and justice, as Mr. Smith says, of delegating that power. If that question is not delegated to some experts or men who have studied along those lines, then it is treated in the Congress and in the state legislatures. Now, each of those bodies—one only being in session a few weeks once in two years and the other being in session almost continuously—is most emphatically able to adjust a fair and equitable rate for all parties considered. In the case held at Wichita before the Interstate Commerce Commission, the evidence there was that the railroads were hauling coal to certain other railroads at just one-half what they charged the consumer. They heard that case and claimed, under Mr. Smith's construction of the law, that they did not have power to make the rate, but declared it unreasonably high. The result was, in place of giving the consumer anything like the rate that they give to other railroads and in place of reducing it 75 cents a hundred to bring it on an equality with the railroad, they reduced it 10 cents. It would have taken seven or eight hearings at that rate to get it down on an equitable and fair basis. Now, then, we contend that the body of railroad commissioners, after making a study of the rate question, ought to be somewhat informed upon the rate question and competent to make a more equitable, fair, and just rate than the legislatures that are occasionally engaged in the election of United States Senators, and which rarely have time to give to a fair hearing. [Applause.] Once in a while there is an extended meeting of the legislature. Last year it took time to knock the coal-oil rate nearly to one-third—established a maximum rate. The railroads said they could not have it, that it would be confiscatory, but they have been obeying it without very much complaint for some months, nevertheless.

Now, I think that Congress, with all its multiplicity of duties, and that the state legislature, with all its multiplicity of duties, and all the necessary politics that enter into those bodies in other and independent legislation, have not the ability or the capacity or the time for making or considering those equitable and reasonable rates.

Mr. LAWRENCE, of Washington. I move that the report be received and ordered printed, and that the report be incorporated in the minutes. I think it would be a matter of courtesy, in view of this admirable report, and justice to ourselves that we receive the report and have it printed.

The motion was carried.

Mr. SMITH, of Alabama. I desire to make a personal explanation.

I was not in the hall before noon when some reference was made by the gentleman from Florida as to the distribution on the train of certain literature. I desire to state that I am alone responsible, and no railroad in the United States had anything whatever to do with it and should not be charged with any responsibility whatever in connection therewith. During the four years in which I was connected with the Alabama railroad commission I read everything bearing upon this subject which I could find, and it occurred to me that possibly I could do the members of this association a favor by furnishing copies of the literature circulated. If I have been guilty of an indiscretion in doing this I most respectfully beg that that indiscretion be visited upon my head alone. It is unnecessary for me to assure this association that I have too much respect for it to do or attempt to do anything to improperly influence its action upon any pending question. I desire to state also that for the membership of the Interstate Commerce Commission I have the highest personal regard. I believe them to be a capable, conscientious, and efficient body of men. I sincerely trust that this explanation will at least clear everyone else except myself with reference to the circulation of the literature in question. I felt that I ought to make that explanation because of some reference to it.

Mr. BURR, of Florida. I want to state to the gentleman from Alabama that in making reference to this literature of Mr. Hines being circulated I was not aware who circulated it, and I passed no reflection on the gentleman from Alabama, and I assure him that I have the highest regard for him.

Mr. SMITH, of Alabama. Still, I felt that under the circumstances I ought to make this explanation.

The PRESIDENT. We will now take up the report on safety appliances.

Mr. KILPATRICK, of Illinois. Mr. President, I have been requested to read the report of the committee on safety appliances. I am not a member of the committee, but there is not a member of the committee present in the convention. One of the members of the committee was a commissioner from my state, and in addition to that the committee report calls attention to some conditions in the state of Illinois, so I have been requested to read this report, which I take great pleasure in doing.

#### *REPORT OF THE COMMITTEE ON SAFETY APPLIANCES.*

Since the last convention of the National Association of Railway Commissioners the state of Illinois has passed a safety-appliance law practically in the form of the federal statute. This is a step in the right direction, and should be followed by other states in which such legislation does not exist.

So far as interstate traffic is concerned, the federal statute is effective and is being generally observed. It has no application to purely state traffic, however, and, as was shown in a statement made before the committee of the Illinois legislature previous to the passage of the Illinois law, there are roads in all the states whose equipment can only be dealt with through state legislation. For the purpose of covering such cases, therefore, and to afford the public and railway employees the same protection in the movement of state traffic as is afforded by the federal statute in the movement of interstate traffic, all other states should follow the example of Illinois. Such legislation would supply any deficiencies that have been found in the application of the federal law to railway equipment, and would bring its benefits home to a large number of people who are now practically without protection. The necessary uniformity in the operation of such laws can only be obtained by following the wording of the federal statute. This is the more desirable as the courts have sustained the validity of the federal statute in all its essential features, and with such a law in each of the states the federal inspectors of safety appliances could cooperate closely with the state inspectors, thus securing an effective enforcement of this beneficent law with respect to all classes of traffic in the nation.

At the present time only thirteen states have laws of this character, namely, Connecticut, Delaware, Illinois, Iowa, Massachusetts, Michigan, Mississippi, Nebraska, New York, Kentucky, Ohio, Rhode Island, and Vermont. Moreover, these laws are not uniform, and in four of the states, namely, Delaware, Kentucky, Rhode Island, and Vermont, they deal merely with the question of power brakes, leaving the coupler question unattended to. One of the greatest difficulties the Interstate Commerce Commission has had to contend with is the argument of jurisdiction—whether or not a particular case fell under the state or federal statutes. Arguments of this sort, as to whether a car is being used in interstate commerce or not, are constantly arising, and the Commission can not go into court with such cases without being absolutely sure of its ground. This makes it necessary to treat each case with particular care. The billing of the car has to be obtained, and it must be absolutely established that the freight was consigned from a shipper in one state to a consignee in another on a through bill of lading, before it is safe to proceed on the assumption that the car is being used in interstate traffic.

With regard to the effectiveness of such laws, it may be stated that notwithstanding the great increase in railroad accidents in recent years, as shown by the reports of the Interstate Commerce Commission, the number of deaths and injuries to employees from causes covered by the terms of the safety-appliance law have immensely decreased. For example, in 1893, the year in which this legislation was enacted, there were 873,602 persons employed on the railroads of the United States, 179,636 of whom were classified as trainmen. In that year 433 employees were killed and 11,277 injured in coupling accidents. Of the class of trainmen 310 were killed and 8,753 were injured in coupling accidents. In 1903, the last year for which complete statistics have been published by the Interstate Commerce Commission, there were 1,312,537 persons employed on the railroads of the United States, 253,460 of whom were classified as trainmen. Notwithstanding the great increase in the number of employees and the increase in the number of trainmen, the total number of deaths from coupling accidents was but 281, or 152 less than in 1893, while the total injuries numbered 3,551, or 7,726 less than in the former year. In the class of trainmen the deaths from coupling accidents numbered 211, or 99 less than in 1893, while the injured numbered 3,023, or 5,730 less than in the former year. In 1893 there was 1 trainman killed in coupling accidents for every 579 employed and 1 injured for

every 21 employed, while in 1903, for the same class of accidents, there was 1 trainman killed for every 1,202 employed and 1 injured for every 84 employed.

A striking thing about this improvement is that it has gone on unchecked by the growing volume of business and in spite of the great increase in the number of men employed. It is well to remember this, as great stress has been laid upon the number of inexperienced men employed in recent years. The figures prove beyond question the efficacy of safety-appliance legislation, and show that by the adoption of proper mechanical devices and their maintenance in an operative condition the safety of railway employees may be largely increased. It is fair to assume, therefore, that similar measures in the interest of the traveling public would produce equally pleasing results, and our experience with this legislation should furnish an argument for the enactment of laws calculated to reduce to an absolute minimum the collisions and derailments that occur upon our railroads with such heartrending frequency.

Your committee can add little to its report of last year on the subject of block signals, further than to say that a bill covering the subject, practically as recommended by the Interstate Commerce Commission in its Seventeenth and Eighteenth Annual Reports, and in line with the recommendation of President Roosevelt in his last annual message to Congress, was introduced in the House of Representatives at the last session of Congress by Congressman Esch, of Wisconsin. This bill died in committee. This is a branch of safety-appliance legislation the necessity for which is constantly growing in importance, and some practical provision for the introduction of block signals, in harmony with such federal legislation as may be enacted, should be included in any proposed scheme of safety-appliance legislation for the states. It should be remembered that legislation requiring the use of the block system does not mean the indorsement or approval of any particular device or system of signaling, but merely a change in the fundamental principle of train operation—the substitution of a definite space interval between trains in place of the present time interval. The means of accomplishing this change should be left entirely to the railroad companies. They should be at liberty to adopt any device that will accomplish the result aimed at.

In connection with the subject of block signals it should be noted that even the most highly approved systems do not at all times afford the protection which the public expects from them. This has been due in every case, with possibly a few rare and unimportant exceptions, to inefficient management or operation and not to fault in the system or the apparatus. For example, a very serious disaster on the Central Railroad of New Jersey, a few years ago, where the best automatic signals are in use, was due to a heedless engineman. On railroads where the nonautomatic signals are used—where every signal operation is made by a man in charge of the signal—signalmen sometimes make mistakes and cause collisions. It is to be borne in mind that these are faults in the officers or employees or attributable to incurable human defects. In so far as the English railroads make better records than our own in this respect, the cause is to be found in the stricter discipline and the longer tenure. Signalmen in England will be found to have been in their places from five to twenty years or more. In similar places in this country very young men and those of limited experience will be found everywhere.

The recent distressing accident on the Lake Shore and Michigan Southern at Mentor, Ohio, affords another striking illustration of the difference in conditions between the railroads of America and those of England. The Lake Shore has block signals, but it has strangely neglected to provide interlocking signals for its facing-point switches. In England the extension of interlocking has kept pace with the extension of block signals. Both are necessary to the most

complete safety. The bill which has been presented to Congress does not require interlocking for the reason that, as it is more costly than block signals, the burden upon the railroads of the necessary expenditure would be much greater. At the same time the very limited amount of interlocking necessary to protect such switches as that at Mentor would not entail a great expense, and it is inexplicable that such a wealthy road as the Lake Shore should have neglected this element of safety.

The bill before Congress, though not requiring interlocking, does provide for the regulation of such switches as that at Mentor by a clause empowering the Government to limit the speed of trains over switches which are not provided with suitable signals. This clause of the proposed law, if it had been in effect, would have imposed on the Lake Shore road, the alternative either of putting in suitable signals or else making a rule to limit the speed of its trains at such danger points. Such a speed limit is eminently fair and reasonable, for when a railroad goes to the expense of installing a system of block signals for the protection of the public its investment is practically thrown away unless it introduces all known and approved safeguards to make its system truly effective, and it should not stop short of the comparatively trifling additional expense necessary to accomplish the result aimed at.

Those who oppose legislation requiring the railroads to adopt the block system point to the numerous accidents that occur upon roads where the system is in use, and argue that the protection afforded does not justify the enforced expense of installation and maintenance. This argument is of no weight for the reason that the accidents cited are in the main due to careless working or improper installation. They have no application to properly installed and properly operated systems, and such are the only ones that should be allowed to exist under authority of law.

There is great need for a proper system of investigation of railroad accidents, both state and national. The object of an investigation should be to give a clear and simple explanation of the facts and circumstances of an accident for the information of the public and the suggestion of remedies to guard against its recurrence. In a few of the states railroad accidents are now investigated more or less fully under state authority, but there is no system of federal investigation. A federal inspector would not interfere with one acting for the state, but would usually cooperate with him, so that there would be no serious duplication of effort or of expense.

Excessive hours of labor are undoubtedly considerable of a factor in causing railroad accidents, and both the national and state governments should introduce some system for effectively regulating this matter. The bulletins published by the Interstate Commerce Commission record many accidents where the employees involved had been on duty an excessive number of hours, and the Commission's attention has been called to such cases by employees and others on numerous occasions. Many of the roads have rules to guard against the overworking of trainmen, and in a few instances measures are taken to make those rules really effective. But in most instances the matter is left entirely to the discretion of the men themselves or to subordinate officials, with the result that the safety of the public is constantly endangered by trainmen on duty when their wits are dulled and senses numbed by fatigue. If there is a reason for limiting the hours of labor in any employment, it applies with peculiar force to the operation of railroad trains, since the safety of the traveling public is so largely dependent upon the alertness and intelligence of train employees.

Since the decision of Judge Humphrey, of the southern district of Illinois,

in the case of the United States *v.* the Southern Railway Company for violation of the Federal safety-appliance law, the Interstate Commerce Commission has had little difficulty in securing proper observance of the statute. That decision, in connection with the decision in the Johnson case, clearly interpreted the law in certain particulars wherein carriers, as well as the Commission, had been in doubt, and the railroads generally immediately cooperated with the Commission to carry out the court's interpretation of the statute. Nearly every road of importance in the country has issued notices that cars will not be received from connecting lines unless their safety-appliance equipment is in perfect order, and at such large interchange points as Chicago, St. Louis, Buffalo, Detroit, Toledo, and Columbus local agreements and interchange rules have been modified so that carriers no longer receive or deliver cars with defective safety appliances. The effect of this policy is observable in a vastly improved state of equipment the country over, which improvement will undoubtedly be reflected in the record of casualties to employees when the next annual report of the Interstate Commerce Commission makes its appearance. The result proves the efficacy of conservative safety-appliance legislation, and should furnish an effective argument for state action in the matter along federal lines.

Mr. McMILLIN, of Washington. I move the adoption of the report.

Mr. KILPATRICK, of Illinois. I have just had my attention called to the fact of the receipt of a telegram from Mr. George W. Bishop, of the Massachusetts commission, who was a member of the committee which was charged with the duty of preparing the report of the committee on safety appliances, and he says, dated at Boston, August 14, to the Hon. Edward A. Moseley: "I do not wish to sign the report." Signed, George W. Bishop. Mr. Bales, of New Hampshire, and Mr. Baker, of New York, both concur in the report.

The motion was carried and the report adopted.

The PRESIDENT. The next is the report of the committee on uniform classification.

Mr. D. H. SMITH, of South Dakota. Mr. Upshur, of Virginia, the chairman of this committee, was unable to get the committee to come together, but through correspondence he found out the wishes of each member. I had a letter from him the other day asking that I present this report to this convention, and also stating that perhaps some of the members would be here, and if they were to have them sign the report if they cared to do so. The only member of the committee present besides myself is Mr. Earle, of South Carolina, and he joins with me in this report of Mr. Upshur. The report of the committee is as follows:

#### *REPORT OF THE COMMITTEE ON UNIFORM CLASSIFICATION.*

Since the year 1889 persistent effort has been made by the National Association of Railroad Commissioners and their predecessors to have a uniform classification of freight prepared by the proper governmental body for use by the railroads in the United States. Year by year, as conventions have been held, committees have been appointed and reappointed with a view to establishing a basis to accomplish this end, the same to be submitted to the Interstate Com-

merce Commission, and by that body to Congress for proper legislation. Among the shippers and receivers of freight throughout the country there is almost a unanimous desire for a uniform classification, and while there has been expressed some apprehension on the part of some railroad officers that uniformity would be disastrous to industries built up along their lines, it is gratifying to know that the best-informed railroad officers in the country favor a single classification.

The first meeting held for this purpose was in the city of Washington on the 5th of March, 1890. To instance the feeling animating the business organizations it is only necessary to recite a portion of a resolution passed by the Louisville Board of Trade when they were invited to participate in the deliberations at Washington:

*"Be it resolved,* That we hail with pleasure the call, and especially the disposition shown to carefully consider this most important matter of a uniform classification of freights applicable to the whole country.

"That we appreciate the injustice of the present mixed classifications in effect and urge upon the railroad commissioners of the state of Kentucky to attend the convention and to do all in their power to bring about the accomplishment of the above object."

The meeting was held in the city of Washington on the 29th day of May, 1890, and certain questions were submitted to be taken under consideration and for report at a later meeting.

At the convention held in Washington on April 13 and 14, 1892, the following resolution was offered and adopted:

*"Resolved,* That we believe that still further advance toward uniform classification of freight will promote the welfare and convenience of shippers and of the railroad companies, and that we commend a conservative but persistent effort to that end."

And it was further—

*"Resolved,* That this convention recognizes the difficulties that stand in the way of the accomplishment of this purpose. It is believed that the end in view can only be attained by the exercise of federal authority, and we respectfully present the subject to the Interstate Commerce Commission as one worthy of their persistent and continued effort to the end that a system of uniform classification of freight, applicable to every part of the United States, shall ultimately come to be an accomplished fact."

These resolutions were adopted.

At the convention held in Washington April 19 and 20, 1893, it was—

*"Resolved,* That we believe that still further advance toward uniform classification of freight will promote the welfare and convenience of shippers and of the railroad companies, and we commend a conservative but persistent effort to that end.

*"Resolved,* That this convention recognizes the difficulties that stand in the way of the accomplishment of this purpose. It is believed that the end in view can only be attained by the exercise of federal authority, and we respectfully present the subject to the Interstate Commerce Commission as one worthy of your persistent and continued effort to the end that a uniform system of classification of freight, applicable to every part of the United States, shall ultimately come to be an accomplished fact."

It will be noted that these resolutions are identical to the resolutions passed the preceding year.

At the convention held in Washington May 8, 1894, a report was submitted by the committee on uniform classification of freight which comprehensively



showed the necessity for a single classification and its great value to the shipper and receiver of freight and its great convenience to the carriers. The Hon. Ira B. Mills, president of the association, was chairman of that committee. It was particularly called to the attention of the convention in that report that some traffic managers, particularly those on short lines, were of opinion that a uniform classification would prove disastrous to their road. It will be noted that throughout the deliberations and recommendations and resolutions passed by the committee on uniform classification the most strenuous objections have come from traffic managers of small and not of large railway systems.

The report of the committee at the convention held in Washington May 14 and 15, 1895, consisting of Ira B. Mills, chairman, William Kirby, S. R. Billings, and H. D. Bulkley, comprehensively dealt with this subject, and in submitting their report offered the following resolution:

*"Resolved,* That the subject of uniform classification be recommitted to the present committee or a new committee to be appointed, with instructions to its chairman to call said committee together at an early day for consideration of the subject, and that he be requested to notify the various traffic associations of the United States and Canada to send a representative of each association skilled in classification to such meeting for the purpose of a conference with a view to reaching the desired end."

At the convention held in Washington May 19 and 20, 1896, among other things stated in the report is the following:

"One of the difficulties in the way of universal uniformity is the power of the different states to regulate the classification for state shipments."

The chairman of the committee addressed a circular letter to the different state commissions, requesting their opinion as to the action of their state on the subject, if a classification was agreed upon by the companies or made by the Interstate Commerce Commission by authority of Congress. There were 22 answers to the 28 communications, from as many states, received, 18 of which expressed themselves in favor of uniform classification and the expediency of immediate action by Congress on the subject; 4 were noncommittal, mainly for the reason that their commissions had no power upon the subject of rates or classification. The committee at that meeting offered the following resolution:

*"Resolved,* That the National Convention of Railroad Commissioners, recognizing the necessity of uniform classification of freight in the interest of both the commercial public and the railroads, do respectfully recommend that the railroad companies of the United States, through their respective traffic associations, prepare a uniform classification for adoption by the Interstate Commerce Commission, the various state railroad commissions, and the railroads themselves, and that in the event of the failure of the railway companies to prepare and adopt such uniform classification within a reasonable time the necessary legislation should be asked by Congress requiring the adoption of a uniform classification of freight, and that the Interstate Commerce Commission be charged with the duty of preparing and enforcing such classification.

*"Resolved,* That the Interstate Commerce Commission be respectfully requested to communicate from time to time with the various railroad interests with the view of forwarding the work, and that the said Commission be requested to present a suitable bill to Congress in the event of a failure on the part of the railroads to prepare and adopt a uniform classification within a reasonable time."

On November 1, 1896, the committee, through its chairman, Hon. Ira B. Mills, addressed a letter to the railroad traffic managers and freight associations of the

United States. This referred to a conference with the committee in New York, October 23, 1895, for the purpose of discussing a uniform classification and for devising some means for its accomplishment. That meeting was attended by some of the ablest men in railroad service and in the national service, among whom are the following: Hon. M. A. Knapp, Hon. J. C. Clements, of the Interstate Commerce Commission; Mr. A. C. Bird, freight traffic manager of the Chicago, Milwaukee and St. Paul Railway Company; Mr. J. M. Johnson, chairman of the committee of the Western Freight Association and general freight agent of the Chicago, Rock Island and Pacific Railroad Company; Mr. H. B. Chamberlin, general freight agent of the New York, Lake Erie and Western Railroad, representing the Trunk Line Association, etc.; of the committee, Messrs. Mills, Billings, and Bulkley. At that conference it was unanimously agreed that for both the carrier and the general public a uniform classification of freight was desirable. In fact, the necessity and desirability of such a classification has been recognized by carriers ever since the enactment of the interstate-commerce law.

At the convention held in Washington May 10 and 11, 1898, a report was made by the committee embodying the proceedings of the conference held in New York in October, and published in full in Senate bill No. 775, which was then pending before the Committee on Interstate Commerce, and generally known as the Cullom bill.

At the convention held in Denver, Colo., August 10 and 11, 1899, there was no report made embodying any new matter, but the committee urged that the various state railway commissions and the Interstate Commerce Commission pass strong memorials to the Congress of the United States for the passage of such a law as indicated in the association's report of 1898.

At the convention held in Milwaukee May 28 and 29, 1900, we quote the following from the report of the committee:

"In our judgment, the only way by which uniformity of classification can ever be secured is for the federal Congress to authorize and require the Interstate Commerce Commission to compile and publish a classification which shall be applicable to all interstate shipments of freight in the United States. As a matter of convenience, the different roads would naturally apply such classification to their interstate business as well, and even if they did not there is little doubt that the various state commissions which have published classifications would adopt that promulgated by the Interstate Commerce Commission, with the final result that its application would become universal in this country.

"However much tariffs may vary in different sections of the country, all rates are based on classifications. In the interchange of traffic between sections which employ different classifications it will be readily seen that discrepancies and mistakes must necessarily occur. It affords great latitude for unwarranted manipulation of rates by the unscrupulous, from which the railways have suffered as severely as the public. Enforced uniformity in the classification would greatly simplify the entire transportation problem and would be a great advance in the direction of stability in freight rates.

"This can never be accomplished except by a disinterested body, clothed with power not only to make but to enforce such a classification."

The convention held in San Francisco June 5, 6, and 7, 1901, practically reiterated the recommendation of the committee at the previous year's convention.

At the convention held in Charleston, S. C., February 11 and 12, 1902, there was no formal report of the committee.

At the convention held at Portland, Me., July 14, 15, and 16, 1903, the committee reported practically in accordance with the reports that had been made in

previous years, urging a uniform classification, which was, on the part of the representative from South Carolina, strenuously opposed; but at the convention held at Birmingham, Ala., November 15, 16, and 17, 1904, all opposition on his part was withdrawn and the recommendations previously made were reiterated.

The above quotations have been made in order to place in convenient form before the convention the action that has been taken at previous conventions, and to demonstrate that no definite specific plan has been laid down as a recommendation by the committee on uniform classification to accomplish the desired end. Only a recommendation that a uniform classification be adopted was made in general terms, but specifying the means by which it should be done nothing definite has been said. It is recommended, therefore, that the following plan be submitted by it to the Interstate Commerce Commission, and, if approved, to be submitted by it to Congress for action:

That the country be divided into twelve sections, these sections to be based on the number of railroad miles contained in each, each section to have a like number of railroad miles, and a representative be appointed from each of these sections, and a chairman be appointed, making the thirteenth member; that they sit as a committee in the city of Washington and be given adequate working force to prepare within two years from the date of their taking office a uniform classification, this classification to be printed and distributed generally throughout the country among the railroads, shippers, and receivers of freight, who will be given one year to offer any objections to any classification of any article therein contained; that twelve months be allowed the committee to consider these objections and rearrange the classification, if necessary, and at the end of that time republish it and distribute it among the railroad companies, shippers, and receivers of freight, advising them that at the end of twelve months from the time the revised classification is in their hands the same will become operative.

This is offered as a tentative plan, which is by no means considered perfect; but it offers, we believe, the first definite plan of action to be taken in this matter. It is urged by the railroad companies that it is impossible to reduce the three classifications now in effect throughout the United States to a uniform classification; but this statement can hardly be accepted for the reason that prior to 1887 there were practically 400 classifications in effect in the United States, and that at the passage of the interstate commerce bill these were consolidated into three classifications, the country being divided into three grand divisions. It is reasonable to suppose, therefore, that if 400 classifications for the entire country can be reduced to three classifications for the entire country the present existing three classifications can be consolidated into one, for there is as great diversity of traffic in the territory of the Western classification, which embraced a country double in area that of both the other grand divisions, namely, the Official and Southern classifications territory, and that the diversity of traffic is as great within that territory as it is within the entire borders of the United States.

It is respectfully submitted, therefore, by your committee that this recommendation be made to the Interstate Commerce Commission.

Mr. EARLE, of South Carolina. I move that the report be adopted.

The motion was carried and the report adopted.

The PRESIDENT. We will now hear the report of the committee on rates and rate making.

Mr. CONNOLLY, acting secretary. I understand that there is no report on rates and rate making.

The **PRESIDENT**. No members of the committee are present?

**Mr. CONNOLLY**, acting secretary. No, sir.

The **PRESIDENT**. As there are no members present it will be passed. We have still the report of **Mr. Burr**, which was offered this morning, recommending certain legislation. Judge **Clements**, of the Interstate Commerce Commission, is chairman of the committee on legislation, and it seems to me that we should hear his report before we finally act on the other. We will now hear Judge **Clements'** report.

**Mr. CLEMENTS**, of the Interstate Commerce Commission. **Mr. President** and gentlemen of the convention, I wish to apologize for not being here earlier, but it was impossible for me to leave home, and my train was late, too, and I regret exceedingly to have missed the previous sessions of this meeting; but I have done the best I could, and by authority of the committee present the following report:

#### *REPORT OF THE COMMITTEE ON LEGISLATION.*

By the action of the last convention a standing committee on "powers, duties, and work of state railroad commissions" has been created. The report of that committee may indicate the legislation in the several states. Another committee has in charge the subject of "delays attendant upon enforcing orders of railway commissions," and the report of that committee will doubtless deal with legislation, enacted or proposed, relating to that subject. Other permanent committees whose reports may deal with legislation are those on "grade crossings," "uniform classification," and "safety appliances." A special committee was appointed by the last convention upon "Amendment of the act to regulate commerce," and that committee will doubtless have a report before this convention. It is not unlikely, therefore, that a particular matter will be referred to in the reports of two or more committees. The possible result, however, in no degree impairs the cogent reasons for the continuance of these committees to deal specially with the several important matters referred to therein, as well as the general subject of legislation.

The report on legislation submitted at the last convention called attention to the fact that previous reports have not made prominent matters concerning state railway regulation, and it was suggested that the association might devote more time to general discussion of the subjects relating thereto. With a view to this a circular letter, signed by the chairman of this committee, was sent to each body represented in the association July 1, 1905, and was as follows:

"The last convention of the National Association of Railway Commissioners manifested the desire, and various individual members expressed the wish, that the report on legislation for this year should include a statement of legislation in the states, and also indicate, generally, at least, what, if any, amendments to state laws are desirable in the public interest or for the proper protection of railway companies. A satisfactory report upon these subjects can only be made upon statements of all the states having railroad commissions, or state officers charged with any duty of railway supervision, showing:

"1. Any railway legislation which has been enacted by the state during the past two years.

"2. What, if any, railway legislation by the state is required to promote the public interest or properly protect the railway companies?

"To make the report of the committee valuable in this respect, it is necessary

that data of the kind mentioned shall be secured from practically all those states or a reply that no such legislation has been enacted or is deemed necessary.

"With reference to railway legislation during the last two years, while copies of the acts would be desirable, they should be accompanied by a brief summary thereof which can be utilized by the committee in its report. The summary is really what is most required. A further short statement should be given, indicating the character of the legislation that may be required.

"Your active cooperation in this matter is earnestly requested, and, as the report of the committee must be prepared within a very short time, it is hoped that you will prepare and forward the statement immediately."

Only thirteen answers giving the information desired have been received. The substance of these answers is as follows:

#### LEGISLATION ENACTED DURING THE PAST TWO YEARS.

*Florida.*—Requiring express companies to pay loss and damage claims within ninety days.

*Georgia.*—None.

*Illinois.*—Safety-appliance act similar to the federal safety-appliance statute,

*Indiana.*—New railway regulating act. Commission has authority over steam road crossings, sidings, siding locations, connections between roads, interlocking apparatus on steam and electric roads, private tracks, and private-car lines. Its regulating authority extends to steam roads and express companies. It has power to put in new rates on complaints. Statute provides penalties for overcharges and discriminations. Commission may complain to the Interstate Commerce Commission concerning rates on interstate traffic. Commission may report to governor any defect in physical condition of roads or their management and operation.

*Iowa.*—Requiring railroad companies to issue passes to shippers of live stock, and providing water-closets in cabooses attached to stock trains. Construction of drainage ditches across railway right of way.

*Kansas.*—In 1903 the railway laws of Kansas were amended so as to create a board of railroad commissioners. Sections 1, 2, and 4 of the railway law of 1901 were repealed. The powers and duties of the commission are as provided in the law of 1901. The commission has general supervision of all roads operated by steam within the state, of express companies, sleeping-car companies, and other persons or corporations doing business as common carriers. The commission has jurisdiction over spurs or switches, intersection of tracks and crossings, automatic signals, direction of depots, and also to fix reasonable and just rates upon complaint. The passenger rate is limited to 3 cents per mile. Other provisions in the statute apply to the furnishing of cars, prohibition of discriminations, and also to the common-law liability of carriers.

*Kentucky.*—None.

*Minnesota.*—Requiring reports of accidents within sixty days to the commission. Investigation by commission of railway accidents and subsequent regulation. Report by commission of accidents to the legislature. Act of 1905 authorizes carriers to fix rates and regulations in the first instance. Provides for publication of rates and that they shall not be changed except upon the order or by consent of the commission. Emergency rates may be allowed by the commission. Prohibits rate discriminations. Requires maintenance of toilet rooms in depots. Mileage tickets or books shall be transferable. Name of city or village to be also name of railway station, except where confusion results from the use of similar names. Commission may complain to Interstate Commerce

Commission of violations of interstate-commerce act. Jurisdiction of commission over gates of flagmen and other safety devices in villages or cities where there are dangerous crossings. Time of arrival of passenger trains to be bulletined twenty minutes before the schedule time for arrival. Commission required to make general investigation as to reasonableness of rates in the State and to make such orders in the premises as may be justified by the facts.

*North Dakota.*—Providing for assessment of electric railways in the manner already provided for the assessment of steam railways. Exempting railways or branch lines from present requirement to provide daily train service five years after construction, and all railways or branch lines not exceeding 25 miles in length. County commissioners, township supervisors, and trustees of towns and villages authorized to grant right of way for construction and operation of electric and other railways on public grounds and highways. Authorizes intersection of railway tracks.

*Pennsylvania.*—Providing for improvement, amendment, and alteration of corporation charters. Authorizing railway companies to secure an adequate supply of water for their corporation purposes. Providing for increasing capital stock and indebtedness of corporations. Making further provision for incorporation and government of street railways. Empowering railway companies to change the location and grade of highway bridges and approaches to prevent grade crossings or accommodate the location and construction of the railroad.

*Vermont.*—None.

*Washington.*—New railroad-regulating statute enacted in 1905. Constitutes a railroad commission, and empowers it to fix freight and express rates on all steam railroads within the state of Washington. Forbids discriminations and extortions; authorizes the commission to make all rules and regulations necessary to carry into effect the provisions of the act; to correct and provide charges for hauling loaded or empty cars; to require proper trackage and train service, demurrage charges, and sufficient freight and passenger rooms.

*Wisconsin.*—A railroad-regulating act became a law in this state in 1895. A railway commission is created. Railroad rates must be published. The commission has power to enforce reasonable regulations as to the furnishing of cars and the switching of the same, and as to the loading and unloading of freight and also the weighing of cars and freight offered for shipment. The commission also has the jurisdiction to fix reasonable and just rates, upon complaint and after investigation, and also to complain to the Interstate Commerce Commission of alleged unlawful interstate rates; discrimination and preferences are forbidden.

#### LEGISLATION RECOMMENDED.

*Florida.*—Inspection and supervision by the commission of railway tracks.

*Georgia.*—Extra passenger trains when regular schedule of trains are greatly behind the published schedule. End platforms and doors to freight conductors' cabs. Failure of railroads to promptly receive and transport goods for shipment. Side tracks and physical connections between railroads. Recovery of penalties for violations of commission's rules and orders in the county wherein the violation was committed. Injunctions requiring railway companies to perform their duties as common carriers and to obey the orders of the commission.

*Illinois.*—Protection of railway crossings similar to New York statute. Obstructions over the right of way and tracks of railway companies. Jurisdiction of demurrage charges. Number of men in train crew. Fellow-servants.

*Indiana.*—None.

*Iowa.*—No recommendations..

*Kansas*.—No recommendations.

*Kentucky*.—No recommendations.

*Minnesota*.—Legislation recommended relating to construction of new roads; examination of new roads before being put in operation; interlocking devices at crossings, and lock signals; immediate reports of accidents.

*North Dakota*.—No recommendations.

*Pennsylvania*.—No recommendations.

*Vermont*.—Recommended that laws relating to powers and duties of the commission be entirely recast and reenacted. Recommendations include provisions for ordering change in the running and connection of passenger trains; supervision by commission of farm crossings; fines upon motormen and conductors of electric cars for crossing steam roads at grade without first stopping car and displaying danger signal; application to commission for construction of electric railroads and approval of its stock and bonds; compilation of the railroad laws; electric-railway signals; prohibition of running any car in front of the motor car on electric railroads; miscellaneous provisions in regard to electric railroads; overhead obstructions; abandonment of stations and diminution of accommodations furnished by railroads; power to reduce rates should be vested in the commission.

*Washington*.—No recommendations.

*Wisconsin*.—No recommendations.

(Since this paper was printed further response was received from the Wisconsin commission, indicating a recommendation which should be embodied at this point, and I ask leave now to insert it as part of this report. That state recommends the amending of the present law to provide against railroad officials and employees becoming interested in elevator companies which have to do their business over the line of road with which they are connected.)

Within the past year there have been established rate-making commissions in three states—Indiana, Washington, and Wisconsin—and in recent years whenever state regulation has been established the legislation has been of the same character. In 1900 there were 20 state commissions having power over rates, while now 24 out of a total of 32 exercise that power.

It seems to your committee that future committees on legislation should be definitely charged with the duty of reporting upon the subject of uniformity in legislation on important matters, such as the construction of new roads, both steam and electric; issuance and increase of stocks and bonds, and other changes in capitalization; inspection and supervision of tracks, switches, and grade crossings, safety appliances, including block and other signals; investigation and report of railroad accidents; taxation and other matters relating to railway management and operation which have become the subject of diverse legislation in the various states, but as to which all interests concerned would seem to be promoted by uniform regulations. It is not believed, for the present at least, that this effort should extend to uniformity in powers of rate regulation, especially in view of the rapid progress which has already been made by many states in that respect, and also because that constitutes a branch of regulation to which in different states many varied considerations may apply.

Amendments to the interstate-commerce laws which would enable the Interstate Commerce Commission, after complaint and full hearing, to order and enforce reasonable rates in place of those found on such complaint and hearing to be unreasonable have been repeatedly recommended by the association, but such amendments have not been enacted by Congress. These recommendations and those of the Interstate Commerce Commission have been supported by resolutions of state legislatures, boards of trade, and chambers of commerce, independent shipping and trade organizations, farmers' and other producers'

associations, and thousands of shippers and consignees acting individually, and very generally by the press. Added to these was the forceful recommendation in the last annual message of the President and subsequent public utterances of the Chief Executive. Following the message of the President extended hearings were had by the House Committee on Interstate and Foreign Commerce, resulting in the report of a bill to the House of Representatives, known as the "Esch-Townsend bill," which passed the House by a vote of 326 in the affirmative to 17 in the negative. The Senate did not take action upon it, but after the close of the session the Senate Committee on Interstate Commerce held hearings covering a period of about five weeks.

Generally speaking, the railway companies have opposed this legislation apparently with all the resources at their command. It is believed, however, that there is reason to expect some action calculated to promote effective regulation of interstate railway rates and transportation will eventually result, and perhaps at the next session of Congress. This committee does not present any resolution for the action of the convention, because of the fact that there will be due another report relating to this proposed legislation from the special committee, but it is recommended that the duty of preparing such a resolution be referred to the committee on "amendment of the act to regulate commerce," and to this committee for joint action and report during the session.

MR. PRESIDENT. I do not desire at this time to make any remarks upon this report, except again to apologize for not being here earlier, which was impossible on account of unavoidable causes. It has been the purpose of members of the Interstate Commerce Commission to take part in these meetings at all times when practicable to do so. It is never practicable when held away from Washington for all members of the Commission to be here, and the work of the Commission is very pressing at this time. I must therefore ask you to excuse the other members, who are members of this convention also, for not being here. There have been very few sessions of this convention during the existence of this association at which some one or more members of the Interstate Commerce Commission have not been present. It is always instructive to meet gentlemen engaged in the same business in the different sections and localities of the country, where they meet varying conditions and interests, and it is, as suggested in this report, believed by us to be of value to the members of the different commissions of the several states to discuss these questions, with which each and all of them have more or less to do in the interest of harmony and uniformity, and those believed to be promotive of the interest of the railroads as well as of the people. Certainly there can not be any reason why, in respect to safety-appliance reports, grade crossings, and a half dozen other subjects which are matters of common consideration wherever railways exist, they should be divergent. There is no reason why there should not be uniformity. There are many reasons why they should be in the interest of the carriers as well as of the public. There is at the close of this report a suggestion that there is no recommendation made here relating to the interstate-commerce legislation, that matter hav-



ing been referred especially to another committee. I understand that that committee has made its report; therefore, I beg to withdraw that part of the report—that suggestion at the conclusion—or at least to ask that it be passed by in adopting this report, if you should see proper to adopt it, because of the fact that that committee has made that report, and I understand it is before the convention.

In view of all that, I think it would be hardly practicable now to leave this matter to a joint committee to consider that and bring in a report, because I understand you propose to adjourn this afternoon. We would have no time for action this afternoon. With the consent of the other members of this committee present, if they have no objection—I have not consulted them about it—I would like to strike out that last clause, stating that this be referred to a joint committee to report. There are several suggestions in here about the subjects to be referred to future committees which have reference largely to the matter of forming a basis for the discussion of these questions, which it seems to us would be proper subjects for uniformity in regulation, the future reports to make a basis for discussion and consideration of such suggestions. [Applause.]

Mr. McMILLIN, of Washington. I would like to ask, before the adoption of this report, that the state of Washington's recommendation along the same lines as those indicated for Wisconsin be attached to the report, opposite the name of the state in the report, and made a part of the report. The language recommends the amending of the present law to provide against railroad officials and employees becoming interested in elevator companies which have to do their business over the line of road with which they are connected.

Mr. CLEMENTS, of the Interstate Commerce Commission. I will ask the unanimous consent of the convention, as well as the permission of this committee which I represent, to adopt these recommendations.

Mr. EARLE, of South Carolina. Could you give me a few moments, please? I am on the committee on uniform classification, and I think some of the things in that properly come up as legislation. The railroad commission of South Carolina has absolute supervision of about twenty-six railroads, and there should be some uniform classification. Now, for instance, we take claims. We have no power to collect claims in South Carolina, because they are interstate railroads and all the different roads have a different classification in the different states. Georgia, our sister state, has an entirely separate classification from South Carolina. We can not tell what the rate is in Georgia unless we have their book. There is no recommendation in their book from South Carolina whatever. I desire to ask the Interstate Commerce Commission or fix some place where we can collect claims from railroads that run through several states, also as to mileage

books, so a man can go from one road to another at the same mileage; also as to safety appliances. Our railroad commission passes a resolution for this and that and then goes into the court, then in the United States court. Now, I think these committees should be joined together on these two points—the committee on uniform classification and also this committee on legislation—because the two are joined together.

Mr. CLEMENTS, of the Interstate Commerce Commission. The suggestion from the gentleman from South Carolina, I presume, has reference to future reports?

Mr. EARLE, of South Carolina. Yes, sir.

The PRESIDENT. Merely a suggestion?

Mr. EARLE, of South Carolina. Yes, sir.

Mr. ROBINSON, of Kansas. I would say that the classification is really as important as the rate, because it often makes the rate. Under certain classifications that we have now the rate is double in certain classifications what it is in others. There are the Official Classification, the Southern Classification, and the Western. I have in mind a carload of mining material—well-drilling material—that came from East St. Louis, came into another classification territory, and they had a part of that mining machinery and would not allow it to go into the car with the other parts of the machine, and they held it some months. It was taken to pieces and shipped in different cars, increasing the cost undoubtedly more than the original freight, besides hindering the operation for more than three months. So that the classification is equally as important as the rate.

The motion to adopt the report on legislation was carried.

Mr. BROWN, of Pennsylvania. Did that embody the committee's report on the amendment to the law?

The PRESIDENT. No; they make an independent report. They withdraw all questions, as I understand it, as to the amendment of the law.

Mr. CLEMENTS, of the Interstate Commerce Commission. There was no recommendation in this report.

The PRESIDENT. It was left to this committee. We will now take up the question of Mr. Burr's report, and he suggests that the report be taken up eliminating section 4 in the first instance.

Mr. McMILLIN, of Washington. In order to get that question before the house, I move to strike from the report section 4.

The motion was carried and section 4 ordered stricken out.

Mr. LAWRENCE, of Washington. I would like to make a brief explanation of some remarks I made this morning. It is very easy for a person to be misunderstood. This forenoon some remark I made was called into question before this convention, and I presume I did not express myself clearly, and that was on the suggestion made by

one of the speakers that reference had been made to the line of demarkation between the people and the transportation companies. The meaning that I intended to convey in what I said at the time was that I belived it was the work of state railway commissions along the line of the present movement toward securing that proper relationship that existed between people and transportation companies, that we find the line of right that would carry the proper state regulation of railways. To go beyond that line would be to do wrong to the transportation companies. To fall short of that line would be to do wrong to the people, and I do not mean to say that there was any line marking a chasm that would exist between the two, and if my words gave that meaning then I was not understood as I meant to be understood. It is a very easy matter in the confusion of thought that follows extemporaneous speaking that we can not express ourselves so as to avoid all possibility of being misunderstood. That suggested itself to my mind on account of a remark that was made here that "if you love the Lord, the Lord will love you." I do not know whether that was intended to mean "if you love the railways, the railways will love you." Certainly, if in the higher sense, we understand that the Lord will love us whether we love the Lord or not.

The PRESIDENT. The question is upon the adoption of the report of the committee after the elimination of section 4.

Mr. FAIRCHILD, of Washington. With reference to section 3, I desire to offer as an amendment the addition, in the last line on page 2, of the words "unjustly or unreasonably" after the words "they find a carrier is," and before the word "discriminating." Then, on the first line of page 3 insert, after the word "discontinue," "such unjust or unreasonable" preceding the word "discrimination," striking out the word "the." That would leave it reading this way:

Third. If, upon complaint or upon their own motion, they find the carrier is unjustly or unreasonably discriminating against persons or places by way of secret or preferential rates or other secret devices, they will at once order the carrier to discontinue such unjust or unreasonable discrimination and to conform to the published rates.

Conditions are so different that it becomes necessary to make it clear whether it is an unjust or unreasonable discrimination, or it may be that it is a discrimination because the particular locality is entitled to it as a matter of fact and not unreasonable, and I feel that these words ought to be there so that there will be no misunderstanding as to that question, and I move that that amendment be adopted.

The motion was carried and the amendment adopted.

Mr. BROWN, of Pennsylvania. There is something about the fifth section that does not strike me favorably. Perhaps I am under a misapprehension about its provisions; but as I understand it, this organization has never taken the position that there ought to be con-

ferred upon the Interstate Commerce Commission the power to fix rates of transportation for persons and commodities. I am sure that at the session of 1904, held in the city of Birmingham, Ala., the extent of the line of demarcation was this: That where the railroads had fixed the rates of transportation and they were complained of as being unjust or unreasonable, that, on application made to the Interstate Commerce Commission, their reasonableness and the justness of the same should be passed upon by the Interstate Commerce Commission, subject to review by the federal courts. Now, as I understand it, that is the fullest extent to which this organization has ever gone. Now, in section 5 of this report I think indirectly there is an advance here beyond that line of demarcation:

Fifth. That no railroad or common carrier engaged in interstate commerce shall be permitted to advance or increase any rate or rates without first submitting the proposed increased rate or rates to the Interstate Commerce Commission and receiving their approval.

Conditions in this country change, which justify the advancing of rates and which often demand the reduction of rates. That must be manifest on all sides through different means. In the last two or three years, under the classifications which have been put in force and on account of the direct increase of rates, we find that the rate per ton per mile in this country is much more than it was a few years ago. Now, when there are changes of conditions such as I suggest, and which are known to the commercial world and so in evidence, yet a railroad company, under this clause, would not be permitted, no matter what the circumstances were, to advance its rates, however much it might be justified, without receiving the approval of the Interstate Commerce Commission. Therefore I say that that is, if not directly, indirectly giving to the Interstate Commerce Commission the power to fix a rate by holding a railroad company right where it is on rates, notwithstanding there may be circumstances which justify an advance. Therefore I say this report of the committee is going far beyond what has been adopted in previous conventions and certainly in advance of the powers which were given the committee to recommend legislation that appeared before Congress by authority and direction given in the last session of this association.

Another thing, gentlemen of the convention. We have time after time taken this position with reference to what amendment should be made to the interstate-commerce law on this subject. Our committee went before it at the last session of Congress and, according to their report, advocated it with much earnestness. It does seem to me that while we ought not to recede from the position heretofore taken, we simply ought to adhere to it and ought not to pass a meas-

ure which, in my opinion, gives to the Interstate Commerce Commission a power which has been very seriously questioned by the courts of this nation and by many of the best lawyers and jurists of the country. I, for one, believe that the Interstate Commerce Commission should not be given the power to fix a rate. I am willing that they should have the power to determine the reasonableness of a rate when it has been fixed by the common carriers, but that that adjustment and that determination shall be subject to review by the courts.

We talk here a great deal about a fair return on the investments which railroad people make in the construction and on the maintenance and operation of railroads. Do we really realize what that means? We have recently come up through this country on the Chicago and Northwestern, looking out upon a country which but a few years ago was considered a desert and worthless. Suppose the man who wanted a railroad built there had said to those proposing to build this line, "You go ahead and build it, but you shall never have more than 6 per cent on the investment," without any guaranty that it should ever have a cent of return on the capital invested. Do you suppose that road would have been built? Do you suppose that South Dakota would have been what it is to-day? I do not believe it would have been built, and when we say in all of the graciousness of our manhood that a railroad company ought to have a fair return on the investment, do we really realize what that means? How many men of you who are here, who have come to this city, would put your savings of a lifetime in a proposition and feel that some twenty or thirty years hence some one would come along and say—somebody, I mean—"You can only have 6 per cent on the amount of money you invested twenty-five, thirty, or forty years ago?" It would be a pretty critical proposition to us when brought right home to us, and yet when we say, "We are in favor of a railroad having a fair return," we ought to consider what it means. I believe that we ought not to go beyond the position taken in previous conventions, and, so far as I am concerned, I shall vote against this proposition with clause 5 in it.

Mr. FAIRCHILD, of Washington. Do you not mean section 2?

Mr. BROWN, of Pennsylvania. I confine my argument to section 5.

Mr. MCNEILL, of North Carolina. In regard to the last part of section 7, "to require the prompt furnishing of cars for the movement and transportation of freight, offered within a reasonable time after application for same," I think that the states can confer all necessary powers on state railroad commissions to grant relief when cars are needed by shippers for the movement and transportation of freight, whether the same be inter or intra state freight, unless and until Congress passes some law in regard to the same.

In many cases on account of remoteness it would be difficult, if not impossible, for shippers to apply to the Interstate Commissioners for relief, if Congress were to confer such power, while in all cases shippers can easily and promptly have access to the state commissions in their own state; and for this and other reasons I think the power ought to be conferred on the state commissions.

However, I regard the other recommendations contained in this report as so important that I waive this objection, and am heartily in favor of the adoption of the report.

Referring to the suggestions of the gentleman from Pennsylvania, that it is not probable that railroad companies would have constructed so many roads if they had known that a department of the Government would be authorized to regulate their rates. In regard to that suggestion, I do not think that any railroad company could have engaged in the construction of a railroad in this country within the last several years without fully understanding the duty which the common carrier owed the public and the corresponding right of the public. It has been well settled for many years that it is the duty of a common carrier to furnish transportation for a reasonable compensation. This does not grow out of the laws establishing the Interstate Commerce or state railroad commissions, but out of the common law. Laws establishing commissions, in so far as they declare that the rates of common carriers must be reasonable and without unjust discrimination, are but affirmatory of the common law. This was held to be so by the Supreme Court of the United States, and by many of the supreme courts of the states, in which elaborate opinions are written by the ablest judges.

In the year 1876 Chief Justice Waite, in delivering the opinion of the Supreme Court of the United States, in the case of *Chicago, Burlington and Quincy Railroad Company v. Iowa* (94 U. S., 161), states the law as follows:

Railroad companies are carriers for hire. They are incorporated as such, and given extraordinary powers, in order that they may the better serve the public in their capacity. They are therefore engaged in the public employment, affecting the public interests, and subject to legislative control as to their rates of fare and freight, unless protected by their charters. These companies in the transaction of their business have the same rights and are subject to the same control as private individuals under the same circumstances. They must carry when called upon to do so, and can charge only a reasonable sum for the carriage. In the absence of any legislative regulation upon the subject, the courts must decide for them, as they do for private persons when controversies arise, what is reasonable.

Can this power be conferred on the Interstate Commerce Commission without injuring the railroads of the country?

It is claimed by them that such legislation will be disastrous to them and the country as well.

We have had railroad commissions, invested with full rate-making functions, in operation for many years in several states of this Union.

As suggested by Mr. Smith, of Vermont, in another report this morning, I think in deciding this question it would be helpful for commissioners present who are invested with rate-making powers to give to this convention the benefit of their experience in the operation of such laws in their states. Have they experienced the injurious results which it is predicted will follow conferring similar powers on the Interstate Commerce Commission?

One of the gentlemen who addressed us this morning stood at the head of the Alabama commission for four years. He had an opportunity to know how the rate-making power, which was conferred upon that commission, operated in that state; whether it did or did not benefit the public, and whether it did or did not operate disastrously to the railroads.

Now, if he had given us his view with reference to that, or if he had shown us that it was dangerous to confer that power upon the commission in his state, or if any appeal can be made here from the operation of laws conferring rate-making powers in any state of the United States, this would have great force with me. But if the state railroad commissions can successfully and wisely and justly execute laws conferring rate-making functions why can not the Interstate Commerce Commission do so?

They are appointed in the same manner as judges of the federal court. In many respects they stand upon the same footing. Now, why can not five or seven commissioners be selected from this great country of ours who are wise enough, courageous enough, and impartial enough to regulate the rates for the railroad?

I do not see that there is any difference between conferring upon the Interstate Commerce Commission general rate-making powers, as is done in the laws creating state commissions, and conferring upon them powers to make rates when upon complaint a rate charged by the carriers is found to be unreasonable.

Suppose the general power was conferred, what would be the result? The railroad companies would be required to file tariffs in effect on the date of the passage of the law, and they would be adopted until, upon complaint or otherwise, the Interstate Commerce Commission saw some necessity to change the rate. I suppose that was the course pursued by every state railroad commission invested with rate-making powers.

Conferring this power on the Interstate Commerce Commission is not depriving the railroad companies of any legal right. It never was their legal right to say, finally, what was a reasonable rate. In

case of dispute between the shipper or consignee and the carrier the court had to decide what was reasonable, so that will not deprive them of any legal right. It has been demonstrated that the remedy by action in the court is inadequate; so inadequate, in fact, that railroad companies are now contending that the right never existed; that they ought to be free to fix their own rates and charges, like private corporations.

What is the purpose of railroad companies in saying that conferring this power on the Interstate Commerce Commission will prove disastrous to them?

We want them to have fair play. That is our idea. We want a fair tribunal to pass upon the question of what is a reasonable rate; and if a rate charged is found unreasonable, to condemn it and say what is reasonable, and require railroad companies to adopt it. Why will this prove disastrous to the railroads? We do not think that the railroads ought to be judges in their own case any more than anyone else. All that is desired is to have a tribunal which has the power and the facilities and the opportunities of passing on the question dispassionately, fairly, and impartially. Now, why do the railroads oppose this proposition?

Mr. BROWN, of Pennsylvania. May I ask a question? I know very well that the gentleman from North Carolina is always appreciative of any proposition, but my objection was directed toward clause 5. Now, then, my friend from Washington referred me to the second clause. Now, I submit that there is no way to get a contention which may arise under section 5 into the courts, and I do not think there is under section 2, because section 2 is based upon the proposition that where rates are alleged to be unjust and unreasonable the Interstate Commerce Commission shall pass upon them, and that is subject to judicial review. But suppose the railroad company wants to raise its rates, because it feels justified in doing it. Under this clause which is reported how is it to get before the court? No rule is available.

Mr. McNEILL, of North Carolina. Why, Mr. President, I do not understand that this resolution contains all the words that a bill would contain that would be introduced in Congress. I for one would not be in favor of conferring arbitrary powers upon the Interstate Commerce Commission of establishing rates without appeal. It is not the purpose, in drafting a resolution like this, to put all the words that would go into a bill introduced in Congress. I take it all these matters will be hedged around and that the rights of the carrier will be fully protected. That will be a point, if Congress considers our recommendation favorably, that will be hedged around by the draftsmen of the bill.

Now, I am not asking for a tribunal that would be hostile to the



railroads, but for a tribunal that would be fair and just to them; and I have, Mr. President, to say that the public in this great nation of ours has a right to have transportation of passengers and property for a reasonable rate; and then to say to them "You should not have any remedy to enforce that right" is something that ought not to be in a country like ours. Wherever there is a legal right there ought to be some adequate remedy to enforce it.

The Interstate Commerce Commission and state railroad commissions were established for the express purpose of furnishing adequate remedies for enforcing these rights. A department of government with these functions was deemed to be the wisest and the best means to this end.

Every commission that has been established recently in any state has had conferred upon it rate-making powers.

Conventions and legislatures have done this after consideration of operation of laws conferring rate-making powers on the commissions in other states.

Why these objections, Mr. President? They come up just as fresh every time any proposition is made to establish a railroad commission, or to amend the laws establishing the Interstate Commission or state railroad commissions as if they never had been made before. These same objections that are urged now were urged to the formation of the Interstate Commerce Commission. They were urged in your state and in mine, and in every other state where it was proposed to have a commission.

The very same objection was urged to the establishment of the Interstate Commerce Commission that is urged now to the conferring of this additional power upon the Interstate Commerce Commission.

The conferring such powers on state railroad commissions has not had a disastrous effect on the railroads in the states.

In our state railroad mileage has been extended, moneys have been spent in betterment of their property and in improving of their equipment. There is in our state more railroad building right now than there has been for several years. Railroads in our state are in a prosperous condition, notwithstanding the fact that they were not permitted to increase their rates in some instances as they wished, and the further fact that unreasonable and oppressive rates were in some instances reduced and a reasonable rate established for future transactions.

I think if we could hear from commissioners from the different states having rate-making functions it would throw light upon the question.

Mr. BURR, of Florida. As was suggested by the gentleman from North Carolina, it was not the intention of this committee to use such

language as would be used in drafting a bill, but simply to offer suggestions to those who may be selected to draft a bill, and those who frame that law in Congress may simply use it as a suggestion.

Now, as to section 5, I wish to state that it is presumed that the tariff in force to-day—that if the rates therein are reasonable now, if reasonable to-day, and the railroad company raises them to-morrow, then they must not be reasonable. Therefore, I think it is perfectly proper that the Interstate Commerce Commission should pass upon whether the rate is reasonable.

The motion to adopt the report was carried.

The PRESIDENT. This is the last report, and we have still the election of officers of this association.

Mr. BURR, of Florida. I move to proceed with the election of officers.

The motion was carried.

#### ELECTION OF OFFICERS.

Mr. BROWN, of Pennsylvania. I will not make any speech, but I desire to present a name for the consideration of the members of this convention. The man whose name I will present was a member of our executive committee. I have known him for many years. He has been a member of the association for some six or eight years. He has attended every meeting and is the embodiment of fidelity, loyalty, and patriotism, of earnestness and devotion to his work, and he has manifested it as a member of the South Dakota commission—Mr. W. G. Smith—and he has manifested it in his work as a member of this executive committee. I do not know how a man could exercise more loyalty or expend more energy in his work than Dr. W. G. Smith has as a member of this executive committee and attempting to do everything he could to serve your welfare, comfort, and convenience while in the state of South Dakota, and especially in the city of Deadwood. The reception which was tendered to you was a compliment not only to you, but to him. I desire to place in nomination for the position of president of this association Dr. W. G. Smith, of South Dakota.

Mr. STAPLES, of Minnesota. I move that the secretary of the convention be authorized to cast the vote of this convention for the election of Mr. W. G. Smith as its president.

The motion was carried and the acting secretary cast the vote of the convention for W. G. Smith as president.

The PRESIDENT. I declare Mr. Smith elected president of this association for the ensuing year.

Mr. CHADBOURNE, of Maine. Mr. President, we have now settled the matter of president unanimously and have made a good choice and elected a man whom we all respect. I desire to present the name of a

gentleman for first vice-president. He has not been a member of the association as long as many others, but he has been long enough so that every member of this convention knows him as an almighty good fellow, to use a common phrase. We all know that the gentleman whose name I am about to present will make a good first vice-president, and I want to offer the name of Joseph P. Rice, of Missouri, as first vice-president of this association.

It was moved that the acting secretary cast the unanimous vote of the convention for Mr. Rice as first vice-president, which was done.

The **PRESIDENT**. Mr. Rice is duly elected first vice-president.

**Mr. McNEILL**, of North Carolina. I think you might go down and take in one of the Southern States, and therefore I place before you the name of Colonel Wharton, of South Carolina, for second vice-president.

It was moved that the acting secretary cast the unanimous vote of the convention for Mr. Wharton as second vice-president, which was done.

The **PRESIDENT**. I declare Mr. J. H. Wharton, of South Carolina, unanimously elected as second vice-president.

**Mr. STAPLES**, of Minnesota. I just want to take one moment to ask the pardon of the convention for urging upon you an evening session last evening, but I hope it is apparent to you all that it was not lost to you.

**Mr. NEVILLE**, of Illinois. I move that Mr. Edward A. Moseley be elected secretary and Mr. Martin S. Decker be elected assistant secretary of the association for the ensuing year.

It was moved that the acting secretary cast the unanimous vote of the convention for Mr. Moseley as secretary and Mr. Decker as assistant secretary, which was done.

The **PRESIDENT**. Mr. Moseley is duly elected secretary and Mr. Decker assistant secretary of the association for the next year.

At this time I wish to appoint Mr. Isaac B. Brown, of Pennsylvania, Mr. H. W. Hill, of Georgia, and Mr. B. F. Chadbourne, of Maine, as a committee of three to draft a resolution of thanks of this association.

**Mr. McD. FERGUSON**, of Kentucky. I desire to say to the convention that Mr. McChord was very anxious to be here, but owing to the death of his father, and to the fact that his wife has been in very bad health, it was impossible for him to come, and I wish to express his regrets.

**Mr. McMILLIN**, of Washington. I move that we adjourn now, to meet again in Hot Springs, S. Dak.

The motion was carried.

Thereupon, at 4 p. m., the convention adjourned to meet in Hot Springs, S. Dak.

## THIRD DAY'S PROCEEDINGS.

HOT SPRINGS, S. DAK., *August 19, 1905—11 a. m.*

The convention was called to order, Dr. W. G. Smith in the chair.

Mr. BROWN, of Pennsylvania. Mr. President, I believe this session was to be held for the purpose of hearing an address from Mr. Cowan. I saw him in Chicago, and the only thing I have heard from him since then is this pamphlet, which I received last night, and on the cover of which is written: "If I don't get there read this for me." Now, it was evident to me when I received this that he was not coming.

Mr. CHADBOURNE, of Maine. If Mr. Brown will pardon me a minute, inasmuch as Mr. Cowan is not here, and this report is printed, I move that this matter be ordered printed in the record without any further comment.

Mr. KILPATRICK, of Illinois. I would like to know what is in the paper. I am not willing to have anything go into the record of which I know nothing and I do not know what is in that paper at all.

Mr. GATES, of Connecticut. I wish to offer an amendment that the paper of Mr. Cowan be received and filed.

Mr. CHADBOURNE, of Maine. I accept that amendment.

Mr. BURR, of Florida. I wish to ask the gentleman if that carries with it the printing of Judge Cowan's speech in the record of the convention?

Mr. GATES, of Connecticut. It does not.

Mr. BURR, of Florida. It strikes me that is not a proper proceeding. Judge Cowan has been invited to address this convention. Had he been here his speech would have been of record. Now, then, if it is not read or not printed in the record it is certainly of no service to this association. None of us will know what it contains, and I think it is time which we might spend profitably to hear it read, and I would like to make an amendment to the amendment, that the secretary read the address. Instead of the secretary, I would say Major Brown, as the request has been made of him.

Mr. CHADBOURNE, of Maine. Every facility has been offered to Mr. Cowan, if he was invited to address this convention, to do so, and he sent his paper here with the request that some one read it. Now, if that request were made of me, I would most positively decline, simply because no man can read another man's paper and do the man who wrote it anywhere near justice. I move that it be printed. It seemed to be the impression of many members of this convention that it should be filed as a part of the record of the convention, and I withdrew—I accepted that amendment.

Mr. McMILLIN, of Washington. I wish to state that at Deadwood a paper of some kind—I have forgotten what it was—was presented

and was ordered printed in the record. It was not read, but was ordered printed, so we have established a precedent, at least, of printing these papers, and I myself am in favor of hearing this document read.

Mr. STAPLES, of Minnesota. It seems to me that it would be well to have this paper printed and read, and as there is no action to take and nothing can result, so far as this meeting is concerned, from hearing the paper at this time, while I make no motion, it seems to me that the part of wisdom would be that we allow the paper to be printed, as has been wisely suggested here. Had Mr. Cowan found it possible to be present, his address, whatever it may contain, would have been made a part of the record, and it will only consume perhaps a half hour and nothing will result from it, and I think it is proper to have the paper read at this time.

The motion as amended was carried, and Mr. Brown, of Pennsylvania, read the following address of Mr. Cowan:

*ADDRESS OF MR. S. H. COWAN.*

That I appreciate your invitation to address you, representing, as I do, the shippers as contradistinguished from the carriers, goes without saying. The herculean efforts which the railways have made since Congress adjourned, through the press, by personal appeal, by literature, and from the platform, will no doubt foot up a total cost which, added to operating expenses, to be paid by the public, were it known, would be appalling. The shipper is limited in means—can not employ able men throughout the country nor secure services of the press to carry on a campaign. He must depend on the patriotism, intelligence, and honesty of his chosen representatives.

Railroads oppose any regulation which would regulate.

Senators and Congressmen should respond to the necessities of the people, whether any considerable number have suggested what is to be done or not. Public representatives should not be mere automatons, to act only when set in motion by public demand. Let them see ahead what dangers appear—what evils exist—and meet them. They should be leaders of men, rather than subservient only to overwhelming public demand. Many of them are, no doubt, but not all by any means.

The question which is uppermost is not so much what is being demanded at the hands of Congress as what ought Congress to do in interest of the public. It should lead, and not merely attempt to trail after a public opinion, or, as our railway friends call it a "popular clamor."

Let us not, therefore, waste our time trying to ascertain just how many or what persons, organizations, communities, or states are favorable to this or that policy on the subject, but rather ascertain, if we can, what policy Congress should adopt and carry out for the public good as the nearest approximation to justice obtainable; for what Congress ought to do is what we all should favor. If that be determined from the conditions which exist, the history and experience of the past, and in the exercise of fair judgment upon the whole situation, it ought to point the correct way.

It is not so difficult to see that railroad rates should be regulated by law. Very few, if any, contend openly to the contrary; but when you go to do it the thousands and hundreds of thousands who profit by the absence of adequate

regulation rise up as one man and smite you right and left, hip and thigh. It is quite a singular situation. They all commend the law which prohibits unjust and unreasonable rates, unjust discriminations, rebates, and undue preference and advantages, and yet oppose every adequate proposed law or bill which attempts to provide that others than the men who profit by the rate shall determine what they shall be in order to be just, fair, and reasonable. It is probably without a parallel that they, in practical effect, claim the right to try their own case—to sit in judgment on the dispute between themselves and the shipper or the Government—in other words, to determine whether the law applies to themselves, and, if so, whether they have violated it, and, if so, to what extent, and to fix the punishment. If the statute itself did not already prohibit unjust and unreasonable, unjustly discriminatory and unduly preferential rates, this might not look so superlatively absurd; but, considering that the law which they commend does thus prohibit and declare such rates to be unlawful, the almost frantic effort of the railroads to prevent its enforcement when sought to protect the public against unjust contributions which may be demanded by railroads for a quasi-public service, by providing a Government tribunal to decide it in case of dispute, and name what shall be charged, is a farce-comedy. And the deeper you probe the bundle of incongruities, absurdities, and inconsistencies which they have put forth as arguments against such measures the worse it shows up. You can't dig in at all without pulling out the contention that the Commission ought not to have the power to fix a right rate in place of a wrong one, because the Commission isn't smart enough—that nobody but a traffic man is smart enough—that no one else knows how. This reminds me of Uncle Remus, who said to the little boy who was about to cry over an apparently inextricable position of Br'er Rabbit: "Never you mind, honey, God Almighty never made a man so smart but what he made another just a little bit smarter."

Injury to the railroads is neither intended nor likely to happen.

It can not be said that to require observance of the law to the end of conforming charges to what is lawful is an injury. Railroads engage in the business under that limitation as much so as a banker engages not to charge usury.

If the principle of regulation is a correct one, its application by adequate means need arouse no fear of wholesale ruin, and its repeated application by the states through the means of commissions, composed of the intelligent and patriotic men whom I address, can not be pointed to in support of the contention that rates fixed by commissions are ruinous. But for the numbers of railway representatives who express these fears and make the contention, it is quite doubtful if anyone would hazard his reputation by such unfounded assertions.

I venture to state, and I do not believe it can be refuted, that the Interstate Commerce Commission, during the eighteen years of its existence, has been very conservative on the side of the railroads. It has not in any case named a rate as a proper one contrary to the proof before it, or on a basis that did not afford a fair margin of profit. Fearing that it might do wrong to the carrier, it has not gone as far in many cases as the facts would justify in behalf of shippers. I assert that in all of the wholesale criticism of the Commission indulged in by railway representatives before the Senate committee not a single case was pointed out where the Commission had named a ruinous rate, in the sense of requiring a service at less than compensatory rates, or than had been at some time customary. A mass of generalities asserted may sound well as a political harangue, but platitudes and opinions expressed in line with the desires of him who gives them are of little value. You do not care so much for the opinions expressed by the honorable gentlemen who represent the rail-

roads, or which I may express, as you do the reasons we give in support of them. It needs no proof to show you that the railroads are opposed to regulation which regulates, and that their representatives will express opinions in support of this opposition. The high standing of the individual expressing the opinion only adds to its value in so far as the reasons given in support of it shows it to be well founded. So, likewise, it goes without saying that all shippers who feel the pressure of rates believed by them to be unjust, unfair, unreasonable, or discriminatory desire a regulation which regulates, and will express their opinions in line with this desire. These opinions are also valuable in so far only as they are supported by sufficient reason. A discriminatory or preferential rate necessarily means that some person or community has an advantage over some other person or community, and it results that those who enjoy the advantage will not want to give it up; hence they will likewise express opinions in line with their desires, and they are likewise valuable in so far only as they are supported by good reason. Therefore let us deal with the reasons which are based on facts rather than mere opinions of those interested. A multitude of errors, in point of fact, have naturally been put forward.

The great mass of the producing and consuming public have not been heard; they will only express their opinions by their ballots when the question comes to an issue to be settled there, as it must. Can anyone doubt the result of submitting the question to a vote of the people? If you know how they would vote upon it, then you know what public opinion is.

The great majority of people in this country favor laws which will secure fair play—"an open field and a fair fight," for every one and obedience to these laws. They believe in the protection of the rights of property and persons and to the full, free, and fair right to such use of property as will not operate oppressively to others. Perhaps the most calumnious of all the absurdities paraded before the committees of Congress and put before the public through the press is that which either asserts or assumes that the disposition of a commission in obedience to so-called popular clamor will be to disregard property rights. I flat-footedly deny that the Commission has ever done that, and I do not believe that any Commissioner has, if only the real and not the perverted facts were considered. I deny that the people have ever demanded that any such an outrage be perpetrated upon the railroads or anybody else. Fair play is what they demand and they want an umpire to decide it rather than the players.

What they want is an adequate remedy to compel the public carriers of the country to obey that law which declares that their rates shall be just, fair, and reasonable in order to prevent the carriers, in disregard of the shippers' rights in his property, from taking more of it to haul it than is just, fair, and reasonable. The property rights involved are threefold—that of the railroads, that of him who pays the freight, and the right to carry on a business in a place on equal footing with a competing locality not more favorably situated except for undue advantage given by the railroads. The assumption that the railroads and their representatives are the special champions of property rights is arrogance personified. In their zeal those who are enjoying the most favorable rates and service have either assumed or asserted that state rate-making bodies have disregarded property rights of the railroads. They cite but two or three instances where the courts have so held, in the great multitude of rates and rate changes by state commissions, as well as the decisions of the Interstate Commission effecting changes in rates. These exceptional instances, if capable of the construction given to them, do not establish a rule; on the contrary, they but show how rare are the exceptions, and how little danger there really is of unjust rates being enforced by the Commission. There is certainly no ground to expect a commission like the Interstate Commerce Commission, entirely removed

from politics or elections and the influences of localities, with no motive to act other than impartially, as their oath and the law requires, to act in disregard of property rights.

Railroads should be required to charge what is just, fair, and reasonable and to not unjustly discriminate between persons, places, or different kinds of traffic, and they should be permitted to so conduct their business as to yield to them the best results within these limits. This involves the principle that they shall be permitted to earn a fair return upon their investment and to discriminate where it is just or reasonable to do so. This the Interstate Commerce Commission has never disputed, but frequently affirmed.

The assumption that the Commission would do otherwise had it the power to fix rates is wholly unfounded, and the sincerity of the assumption therefore is open to serious question. It ought therefore be made plain to Senators and Congressmen that no such flimsy excuse will be accepted as that to explain a failure on their part to act.

Only the body which makes the investigation should fix the rate; investigation enlightens the judgment and is necessary to fair and important action.

But it is very urgently insisted that the body which investigates a complaint against a rate as being unlawful—that is, which ascertains the facts by probing into the acts and business of the carriers at interest—becomes thereby a partisan in the controversy and that it loses its character of impartiality and takes on the rôle of a prosecutor, and as a result can not act as an impartial arbiter as between the railroads on the one hand and the complainant or the public on the other. I very strongly suspect that the charge of the Commission being a prosecutor and, therefore, not impartial, is born of the fact that it has found most cases of complaint justified to some degree or other, and herein is the milk in the cocoanut.

An answer, however, to these unfounded assertions is sufficiently made by what I have already said; that is, that the record of its eighteen years of service does not develop a case which has been cited to prove that because it is charged with the duty to investigate and to impartially and justly decide that it has not or can not perform the latter duty if it does the former. If it is partisan or impartial it should be reflected by its decisions. I venture also to dispute the correctness of the proposition that the duty of investigation would tend to partiality, both in theory and in practice. Upon what reason can it be asserted—as it is—that there is anything in human nature (and it is put upon that ground) which prevents a commission from acting impartially simply because, as a condition precedent to any action at all, it must inform itself in the premises? To state the proposition it to answer it. You gentlemen composing state commissions know beyond peradventure that honest, intelligent, and full investigation is the surest safeguard against the dangers of mere arbitrary and, therefore, possibly erroneous action. It has been the custom of state commissions to as fully as possible inform themselves to the end of acting intelligently and fairly; so it has been of the Interstate Commission. Every lawyer knows that the tribunal which hears the case can more intelligently and correctly pass on the facts than an appellate tribunal upon a record of the facts. So well known is this that it is a general rule, with few exceptions, that the appellate courts accept the findings of fact of the trial court, unless based on some error of law.

Questions before the Commission are questions of fact in determining which the Commission is not exercising judicial functions.

The all-important feature of a commission's decision with respect to the reasonableness or justness of a rate, or as to it being unjustly discriminatory or unduly preferential, is that it is always a question of fact not found as a basis



of judicial decree, but in the intelligent exercise of a legislative function conferred upon it. When it exercises the function of correcting a rate for the future, that is a legislative act and is therefore the exercise of the will, and in that sense becomes arbitrary. The rate fixed becomes the law—the legal rate—so long as in effect. It is in no sense a judgment or decree. That it involves the exercise of that mental faculty called the “judgment” is true, or should be, but that is in no sense the exercise of a judicial function or power within the meaning of the Constitution or laws. It is no more so than it is for Congress to directly exercise the same power and enact that such a rate should thereafter be charged. No one supposes that Congress would do so without passing judgment on the propriety and necessity of such action, but the exercise of such judgment is not judicial. It is condition precedent to legislative action. The fundamental importance of these statements is:

(1) That the power can not be conferred upon a court under the Constitution to make the rate—that is, to make the law—and therefore if there is any means provided by law to correct an existing unlawful rate by changing it and requiring that another specified rate be charged for the future that power must be lodged in a commission of some sort. The power to decide a present rate to be wrong and to enjoin it doesn't reach the evil, and that is as far as the courts can go under the Constitution. They can not fix rates. (2) Therefore no appeal can lie to a court to review the action of the Commission, though one can always invoke the jurisdiction of the court to protect his constitutional rights, as we shall presently see. In common parlance, he thereby appeals to the court. (3) If any review of the action of the Commission is to be afforded in the sense of that term as applied to review on appeals of suits at law or in equity, where the whole matter is reviewed, it must be to some appellate commission in fact, though it could be denominated a court in name, of course; but it would no more exercise judicial functions than the Commission. Let it be remembered that nowhere along the line can this power to fix a rate for the future, on appeal, by review or otherwise, be lodged in a court. (4) Any attempt to provide for review of the Commission's action by a constitutional court could not amount to more than to empower the court in an original proceeding, upon application, in some form or other by the carrier, to investigate the alleged facts in order to exercise the judicial function of determining therefrom whether the rates fixed were violative of the constitutional or statutory rights of the carrier, and if so to decree an injunction. Of course, in absence of statutory prohibition the court could grant a preliminary restraining order or temporary injunction. In other words, treating the Commission's action as legislative, to give precisely the same remedy as could be given against enforcing a law enacted by Congress, except that the Commission exercising a delegated power must act in accordance with the enabling statute; otherwise the court could decree an injunction against its orders as unlawful. (5) No one but the carrier asserting the nullity of the Commission's orders could thus apply or appeal to the court, for the shipper can have only a legislative remedy to fix a specified rate for the future; if the legislative department refuse it, he is at his row's end. The enjoining of an existing unreasonable or discriminating rate by the court in the first instance, upon the application of the shipper or the Commission, is the exercise of a judicial function and does not extend to fixing the rate. In neither case can the court fix a future rate. Likewise, if the Commission's order fixing a rate be enjoined, the court can not substitute a rate in lieu of it.

The application which must be given to these important principles excludes any attempt to frame any law upon the theory that the Commission's order shall not become effective till reviewed by the court, should the carriers elect to apply

therefor. A rate made in accordance with the above principles—and it can not be done otherwise by law—must either be in effect or about to take effect in violation of paramount law or the Constitution before the jurisdiction of the court can be invoked by the carrier to set it aside. And it is not competent for Congress to provide otherwise, for to do so would confer on the judiciary a legislative favor.

A rate fixed by a commission which is clearly so unjust as not to afford a fair margin of profit will be enjoined; it does not have to be confiscatory before the court will act.

The next subject in order is the power of the Commission under the present law and the power of the courts to prevent an abuse of the power of fixing a rate if given to the Commission. In this connection it must be observed that the only question which need now be considered is the power over a specific rate found after investigation to violate the prohibitive features of the law, for no one proposes to confer the power to fix rates generally at this time, though many believe that would be the more logical thing to do, and better for the railroads, for in that case rates too low would be made higher and rates too high made lower, the net result of earnings not seriously disturbed. A specific case of great importance for an illustration is the one now pending before the Commission involving the rates on cattle from the Southwest to the markets. In six or seven years these rates have been advanced from 20 to 40 per cent by a series of advances, so that they are higher, generally, by 25 per cent than the average of the same rates for ten years previous. In the meantime tonnage on the railroads serving the territory has increased 40 per cent, with a consequent increase in gross earnings of, say, 40 per cent. The economies of heavier train loading with better track enables them to perform the service for less money per carload. In the meantime the cattle business has become largely unprofitable. These are contentions of complainant, supported by the evidence. On the other hand, the railroads contend that the previous rates were too low, and that various expenses of special service and the loss and damage incident to the business call for a higher rate of freight. On all these and many other points issue was joined and volumes of testimony taken before the Commission. Practically there is not a question of law in it. Now, suppose for argument's sake it be conceded that complainants in justice ought to have relief against the rates because unreasonable—what relief? If the Commission finds the present rates too high and the former rates to be sufficiently high, what can it do? The law says the Commission shall enforce the provisions of the act. How can it do it? Only by the circumlocution of making an order against existing rates and bringing a suit to enforce the order. Suppose the court sustains the suit; it can do no more than enjoin the present rate, and that can be complied with by a reduction in rates of a fraction of a cent. If that policy is pursued, then it must all be done over and repeated till the railroads are brought to put their rates down to what the Commission may think fair and reasonable. Now, will some one please give some good reason why that should not be done in the first instance? It is really senseless to talk about the Commission or court determining that a given rate is unreasonably high without also arriving at the conclusion as to what the correct rate is.

There has been no argument against giving this power to the Commission except that which is at the same time an argument against regulating rates by changing them at all, by courts or by any other tribunal.

Now, suppose the Commission abuses its power in finding what the rate ought to be. Is it not equally liable to abuse it in finding that an existing rate is too high and should be enjoined without specifying how much too high it is?

If the Commission should hold these cattle rates too high and the court sus-

tain it, the shippers must continue to pay it during the litigation, and I want some one to answer this question: Is it not more just that after the Commission shall have found the rates to be too high that the railroads shall accept that decision as *prima facie* correct rather than that the shipper be compelled to pay it? I know the railroads will answer nay, for the man who names a price for his service is not apt to admit that it is too high or forego the charge if he can compel its payment, as is the case with the railroads. I should like for some really disinterested person to show some reason for not putting the Commission's orders into effect. The only answer that has been made is that the shipper can recover it back if found finally unreasonable, while the railroads can not. I deny the correctness of the statement. The common law has all along afforded this remedy to recover back, and the interstate law has provided for reparation, but who has been able to enforce it? The most the law could do in that respect is to provide that the railroads shall pay it back. It now so provides. You can get it by suing for it, but who has done it? In 95 per cent of the cases the one who pays the freight is not the only one who loses by it. The rate affects the price as well of that which is shipped as that which is not; every fellow expects to saddle it on the other, so in the end it may be and is variously distributed. Certain it is the one who can name the price of his goods or products can add the freight. The result is that the stockman with his live stock and the farmer with his products must always pay it, both on what he sells or what he buys, while in all trust-made goods and most manufactured goods it is added to the price he pays. To talk about the injury of exorbitant rates being compensated for in damages is to blow "hot air," of which we have had enough to put Sahara in the shade.

The courts as now constituted have full power to prevent any serious abuse by the Commission of the proposed power to regulate rates.

The danger of abuse is only in the supposition of the Commission requiring freight to be handled at unremunerative rates. As heretofore shown, that is a mere figment of imagination. But the law now raises a bulwark against it which needs no enactment to make it effective.

Whenever rates are fixed by a legislative agency, state or federal, which require a service at less than is just and reasonable to the carrier and the public and that fact is clearly shown, the courts will enjoin the same, if their jurisdiction is properly invoked. They do not have to be shown to be confiscatory, as that term is commonly used, before the court will act. Let me quote:

In *Nebraska Rate Case* (169 U. S., 466) the Supreme Court said:

"A state enactment or regulation made under the authority of a state enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment of the Constitution of the United States."

It is not preceived wherein the same rule is not equally applicable to a rate fixed by Congress directly or through the means of a commission. That the principle is equally applicable is made clear by another quotation from the same case, wherein it is stated:

"The idea that any legislature, state or federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. The duty rests upon all courts, federal and state, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation.

This function and duty of the judiciary distinguishes the American system from all other systems of government. The perpetuity of our institutions and the liberty which is enjoyed under them depend in no small degree upon the power given the judiciary to declare null and void all legislation that is clearly repugnant to the supreme law of the land."

All the rates, therefore, fixed through the means of a commission or direct legislation are subject to investigation by the courts. In such investigation the fact may be determined as to whether the rate or rates so fixed would deprive "the carrier of earning such compensation as under all of the circumstances is just to it and to the public;" and in the event it should be determined by the court that the rate or rates so fixed would not admit of the carrier earning such just compensation, then that would "deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment of the Constitution of the United States." In such a case the court would not attempt to fix what the rate should be. That the court will not exercise the jurisdiction to fix rates is made clear by the decisions of the Supreme Court of the United States in the case of *Reagan v. Loan Co.* (154 U. S., 362) :

"The courts are not authorized to revise or change the body of rates imposed by a legislature or commission; they do not determine whether one rate is preferable to another, or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work; but still there can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable, and such as to work a practical destruction to rights of property, and if found so to be, to restrain its operation."

There is no combination of legislative and judicial functions in the Commission by extending its power as proposed.

There has been a lot said about combining in the Commission judicial, legislative, and executive functions. Inapt and not well considered expressions of some of the courts are pointed to on the subject, though I believe none of the courts have said that it possessed more than quasijudicial functions.

A careful analysis of the present act will fail to disclose anything in support of this assertion. Conferring the additional power to fix the rate to be observed in lieu of one found violative of the act confers no judicial power, nor does the Commission's decision that an existing rate is unjust, unreasonable, or discriminatory amount to exercising a judicial function within the meaning of the Constitution. The determinations of questions of fact as a basis for performing some act other than granting judicial relief by a tribunal or department charged with executing the law has been practiced since the Government was founded, and no one contends that it invades the province of the judiciary. The laws must be administered intelligently, and that can only be done by leaving it to the departments to judge of the conditions precedent in fact which authorize them to act.

A familiar example is the granting of land patents to persons qualified to receive them. Simply passing judgment on the facts does not constitute a judicial act; it merely furnishes a finding of a condition precedent for a ministerial act. So it is when the Commission finds a rate unreasonable as a basis for ordering the carrier to cease and desist charging it, that is not exercising a judicial function. It has been repeatedly stated by the railway representatives and by others that the determination of what is a reasonable rate is a judicial act; the Supreme Court has said so, but that is subject to the qualification that it is only where its purpose is some measure for judicial relief or in a judicial proceeding. To hold otherwise would be to destroy the right of Con-

gress to delegate the power to fix rates, if it required the Commission to first ascertain whether an existing rate were unreasonable or discriminatory before fixing one in lieu thereof, which it deemed just and reasonable.

A commission is the proper body to fix substitute rates as the means of adequate regulation.

One would think, to read what has been said on the practical side of the question, that there had been no experience in rate making by legislative agency in this country. After an experience of fifteen or twenty years you gentlemen have not found it to be an impossible task. It is difficult of course to arrive at exactly correct conclusions as to what a rate ought to be; perhaps it is never done. But it is just as difficult for the traffic man as for you. His business primarily is to make as much money as he can for his road; it ought to be. Your duty is to see to it that rates are so adjusted as, first, to allow the railroads a fair return upon their business after the payment of expenses and a reasonable allowance for development, and, second, to conform to those prohibitive features of the law against unjust and unreasonable exactions, which are little considered by the railroads, except in so far as it best subserves the policy of making the most money in the long run. Both of you are interested to prevent rebates or discriminations of that nature, but the railways, without regard to the law, favor this or that community according to the interest of the particular line.

Now, I desire to ask whether any of the evils which exist can be corrected without correcting the rate, and if not, how can the rate be corrected except by first ascertaining whether it is wrong and fixing it at what is right? This can't be done by the courts for want of constitutional power, nor by the Commission for want of statutory power; the latter Congress can give, the former it can not give. It therefore comes to this, that either there will be no adequate remedy or this power will be conferred upon a commission.

The alternative of creating a court for this purpose is a mere illusion. You can not litigate these rate questions in order to ascertain what a rate ought to be and to fix it.

Experience has taught you as railroad commissioners that there is no method of proving what is a reasonable rate, as things are ordinarily proven in court. What is reasonable under one set of circumstances may be unreasonable under another, and there is absolutely no standard by which to measure it. At no point in the attempt to define what is reasonable can you put your finger on a fixed factor. Rates must be made by somebody, and the more one investigates the subject the more thoroughly convinced will he be that at least the reasonableness of a rate must rest in the judgment of somebody more than in the mere matter of evidence. Mr. Bird, vice-president of the Missouri Pacific, and a man of wide experience in rate matters, when asked by a member of the House Committee on Interstate and Foreign Commerce to state the basis of making rates, said that they are made by conference, comparison, and compromise. Traffic men must admit, as I know they do admit, that there are no fixed rules or bases of making rates. It is likewise the opinion of railroad commissioners that it is a matter of judgment. Of course the judgment in a given case is not a mere arbitrary one, but enlightened by experience and all obtainable information upon the subject.

With the multitude of duties imposed upon the courts the judges can not, for want of acquired knowledge of the subject, try these matters and decide them as well as a commission having the advantage of everyday experience. The method of court trials and the rules of evidence are an embargo against correct determination of such questions of fact as what is a reasonable rate or an unjust discrimination. The body which decides those questions must consider

the matter from a broader standpoint than that embraced in the mere evidence before it. It at last becomes a matter of judgment. In the multitude of courts how could uniformity be expected? If a new court be established, how can it be expected that the members of it will be better qualified than the Commission? The Supreme Court of the United States has put itself on record supporting the view that a commission is more competent than the courts to decide on the matter of rates.

The Government should regulate the rates, and not merely afford the means of a trial in court, where the ordinary shipper can not afford to engage in the unequal contest with great railroad companies.

No mileage system of rates is necessary or possible.

The assertion that rates will have to be made on mileage basis is not even ingenious; it is mere nonsense. No railroad expects that. No commission expects it. The Interstate Commission has never attempted it; will not attempt it. It is a scarecrow. Why should a commission adopt it? The law does not require it. The provisions against unreasonable rates do not require it. It is not necessary in order to avoid unjust discrimination or undue preferences. As distance increases the cost of carriage per mile decreases; so should the charges therefor. Mileage is considered, or should be, but there are always present a lot of other equally important factors. A commission to act intelligently and fairly must consider them all.

The assumption that the Constitution, which prohibits preferences to ports of different states, requires rates to be made on mileage basis is a mere bubble. It was punctured by the opinion of the Attorney-General of the United States, and until that is answered I shall waste no time on it. I do not believe the contention is sincere. If it were there could be no contention that to avoid preferences rates from everywhere must be on a mileage basis any more than that first-class goods must be carried for the same per 100 pounds as second-class.

The remedy sought.

There has been a constant effort to make it appear that it is sought to give the Commission the power to fix all of the rates. This is a perversion of the facts. It is only sought to give it that power in order to enable it in a given case to regulate the rates by requiring that a right rate be charged instead of one found to be wrong. The charge that the Commission has a vaulting ambition for more power is a very unjust criticism. It has merely asked for the means of performing that duty which the act requires of it—that is, to enforce the provisions of the act. The law requires it to make such recommendations as it deems proper; this it has done. It now remains for Congress to act by simply granting that power which it was thought originally to have had, viz, to name a correct rate to take the place of one found to be wrong. To this there ought to be no objection. In no other way will any regulation be had which affords a real remedy. You have the machinery capable of doing the work if you simply apply the power. [Applause.]

Mr. BURR, of Florida. I move that we extend a vote of thanks to Mr. Brown for the reading of this address.

The motion was carried.

Mr. McNEILL, of North Carolina. I move that the thanks of this convention be extended to Judge Cowan for his address, and that it be printed as a part of the proceedings of the convention.

The motion was carried.

Mr. BROWN, of Pennsylvania. When we went to California and

when we went to Denver Mr. Meyers prepared a souvenir publication of the programme of the convention, its itinerary, and all the proceedings of the trip. It made a very valuable acquisition to our libraries at home and a very pleasant reminiscence of the experiences incident to the trip, and Mr. Meyers proposes to get up a similar publication with reference to this convention and the itinerary to the Pacific coast, and on that line I beg to submit to the convention the following resolution:

*Resolved*, That the National Association of Railway Commissioners hereby authorizes H. B. Meyers & Co., of Chicago, to print and publish a souvenir journal of proceedings of the seventeenth annual convention of this association, which is to contain, besides the regular proceedings of the convention, a synopsis of the railroad laws and supreme court decisions of the various states in the Union, also the federal railroad laws; to print half-tone cuts of the officers of the association, and the Interstate Commerce Commissioners, the railway commissioners or deputy commissioners of the several states and territories of the Union, and in those states and territories having no railway commissioners, state officers who by law exercise active supervisory powers over the affairs of railways; also the secretary and assistant secretary of the Interstate Commerce Commission, and the secretary of clerk of each state railway commission, where such office is created by law, or such other officials as the officers of this association shall designate; also an illustrated description of the excursion of the commissioners to and after the convention.

All of this is to be issued and published without any expense to the association or to the state commissions or commissioners, and that each member of the association is to be furnished a copy of the book free of charge, Messrs. H. B. Meyers & Co. to get their revenue from the sale of advertising contained in the book or the private sale of the same, and that the officers of this association be hereby directed to enter into an agreement to carry out this resolution.

Mr. CHADBOURNE, of Maine. I move that we adopt the resolution. The motion was carried.

Mr. LAWRENCE, of Washington. Much of our time is taken up with side trips. I think we should arrange our convention so that if any side trips are planned the session be independent of the side trips or entertainment. I move that our next session extend four days.

Mr. HILL, of Georgia. I heartily agree with the gentleman from Washington that our session ought perhaps to be a little longer—at least three days, if not four. I heartily agree with him in that, but this matter should be left in the hands of the executive committee. They will consider all the surroundings.

Mr. McMILLIN, of Washington. I am in hearty accord with my colleague in his suggestion upon this question, which I understand is merely a suggestion to convey the sentiment of this association to the executive committee and not an ironclad resolution to absolutely control it.

It may seem a little presumptuous on the part of a member of a

delegation who is attending a meeting of this association for the first time to make many suggestions upon this point, but the delegation from Washington State must travel a long distance to attend this convention. We believe that will be of great value to us. Certainly the one upon which we are now in attendance has been of value to us. We have greatly regretted, however, that the time which was spent on last Thursday at Deadwood in a very intelligent and instructive discussion of the several papers that were presented might not have been extended over a three days' session. So far as we are concerned we feel that it would be most profitable to us, and I also feel that in attending the conventions in the future that more time should be given to the discussion of papers. We can read these reports of the committees at any time after we return to our homes, but these reports, if read before the convention and if an opportunity is given for a full and thorough discussion, we will be able to get the individual opinions of the different members of the convention upon them in a way which will throw an entirely different light upon these reports and papers. It is discussion we are after more than papers, and we would like very much, and I am expressing my own personal opinion, that as much time as may be necessary be given to every gentleman upon the floor of the convention, so that he may have an opportunity to discuss several papers, or at least to ask the questions which may be necessary in order to give him a clear understanding of those papers, and the effect of the same would be felt in the consideration.

Now, if you meet in Washington City next year, suppose when we meet we decide upon a four days' convention. The first day of every convention of this character, as we all know, amounts to very little so far as actual work is concerned. If a train happens to be an hour late, as it sometimes happens, we may possibly get organized the first day. Evening sessions will, probably, in a city like Washington, be out of the question. We will then have Thursday and Friday for actual work. All of you who have ever been in Washington on Saturday know that the clock stops at 12, and that nothing can be done after that hour. Possibly the morning session might be devoted to the election of officers and for the passage of such resolutions as should be adopted. Some time during the session of that convention it will be desired and very desirable that this convention should call upon the President of the United States. That will take out another half day. How much will that leave for deliberation and discussion of papers? I think that we should hold this convention at a time when no holiday intervenes, and then with no side trips, and no entertainment of any kind should be tolerated until this convention has concluded its work, and then I am willing



and will be delighted to spend just as much time as the executive committee sees fit to put in the programme; but until the work is completed, I, for one, having to come from the extreme coast, feel that I will be greatly profited by the discussion of these older gentlemen who have been at work along these lines for many years, and I would regret very much to see the time shortened by anything of that character.

The motion suggesting a four-day session was carried.

Mr. GATES, of Connecticut. I move to reconsider the vote of this convention fixing the date of the next convention for the 21st day of February.

The motion was carried.

Mr. KILPATRICK, of Illinois. I move that the next convention be held commencing upon the 2d day of April, 1906.

The motion that the date of the next convention be April 2, 1906, instead of February 21, as originally agreed upon, was carried.

Mr. STAPLES, of Minnesota. Judge Mills, who was not able to be present at this session, requested me, in his behalf, to extend his thanks to each and every member of this convention for the many kindnesses and courtesies extended him during his term of office.

Mr. Yapp, assistant secretary of our commission, desired me to bring this paper to the attention of the convention. The paper is not long, and I ask that some disposition be made of it.

#### *ANNUAL REPORTS OF CARRIERS TO STATE COMMISSIONS.*

There is a subject which I should like to bring to the attention of this convention, and that is the question of annual reports made by the railroad companies to the various states.

A large number of states use practically the same blank report form as that adopted by the Interstate Commerce Commission, but the methods used by the various railroad companies in making division by state lines are anything but satisfactory, as on investigation we find some companies dividing their earnings and operating expenses on a road-mileage basis, some on revenue-train mileage, some estimated, and some using two out of these three methods.

A resolution was adopted by this body at its seventh annual convention, held in Washington in the year 1895, which reads as follows:

"As a brief expression of the best judgment of your committee on this matter, we beg leave to present the following resolutions for your consideration:

"(1) *Resolved*, That in making their reports to state railroad commissioners the railroad companies shall apportion to each state, on a mileage basis, its proportion of cost of road and equipment, its proportion of stock, funded and other debt, and its proportion of fixed charges.

"(2) *Resolved*, That the apportionment of operating earnings to each state shall be on the following basis, viz, each state shall be credited with all the earnings derived from business originating, terminating, and being carried entirely within such state, and its mileage proportion of all interstate business.

"(3) The earnings and income from other sources than transportation of such railroad companies shall be credited to each state on a road-mileage basis.

"(4) The operating expenses shall be charged to each State on the basis of train mileage in such state.

"(5) The reports on above bases, in those states so requiring, shall be made the first time in the reports for the year ending June 30, 1896."

These state reports are very frequently used by the railroad companies, state commissions, students in political economy, and other interested bodies for the purpose of comparison, and if the information contained therein is not made up on the same basis of divisions for state lines by the railroad companies you can readily understand how valueless they are for this purpose, but if the various states would only agree as a unit to require the same method of division by state lines it would be a very easy matter for the railroad companies to adapt themselves to these circumstances.

I do not at present know whether the blame is on the part of the railroad companies or the state commissioners.

If the methods adopted by the resolution just read are not practical, then by all means let us have something that is.

Another feature of importance in these annual reports is that the books of certain railroads are not kept in such a manner that they can give specific information asked for, but there should be no excuse allowed on these grounds, as these reports are annual productions and the companies should be required to furnish information as requested. As a practical illustration showing the unreliability of these reports as divided on State lines, a statement was promulgated somewhere in the state of Minnesota last winter—I do not know by whom—making a comparison of the net earnings per mile in Iowa for the year ending June 30, 1903, as against the net earnings per mile in Minnesota for the same period, the result being as follows:

Net earnings in Iowa, per mile, as reported in 1903 report.....	\$1,700
Net earnings in Minnesota, per mile, as reported in 1903 report.....	4,900
Excess of Minnesota over Iowa, per mile.....	3,200

I examined the figures and found them to be taken correctly from the reports, but I felt sure that the difference between Iowa and Minnesota was far too great and proceeded at once to make a further examination, which led me to prepare a couple of tables taken from the same reports. The first table consisted of the earnings and operating expenses both in Iowa and Minnesota, being divided on the basis of revenue train mileage, with the following result:

Iowa shows net earnings per mile.....	\$2,449
Minnesota shows net earnings per mile.....	2,757
Excess of Minnesota over Iowa, per mile.....	308

The second table consisted of using the road mileage basis for the earnings in both Iowa and Minnesota and train revenue mileage basis for the operating expenses, with the result that—

Iowa shows net earnings per mile.....	\$3,590
Minnesota shows net earnings per mile.....	3,335
Excess of Iowa over Minnesota, per mile.....	255

The statement is attached and Marked "Exhibit A."

I venture these few remarks so that it may lead up to a discussion of the subject, with a view to the matter being referred to some committee to report at the next annual convention.

## EXHIBIT A.

## IOWA.

Iowa train revenue mileage, 18.95 per cent of the whole.	
Iowa earnings on basis of train revenue mileage-----	\$60, 941, 375
Iowa operating expenses on basis of train revenue mileage-----	37, 689, 365
Net earnings -----	23, 252, 010
Or net earnings per mile, 9,496 miles-----	2, 449
Earnings divided on road mileage basis, 22.32 per cent of the whole--	71, 778, 971
Operating expenses divided on train mileage revenue, as above----	37, 689, 365
Net earnings -----	34, 089, 606
Or net earnings per mile-----	3, 590

## MINNESOTA.

Minnesota train revenue mileage, 14.5 per cent of the whole.	
Minnesota earnings on basis of train revenue mileage-----	\$49, 044, 087
Minnesota operating expenses on basis of train revenue mileage----	29, 058, 719
Net earnings -----	19, 985, 368
Or net earnings per mile, 7,250 miles-----	2, 757
Earnings divided on road mileage basis, 15.75 per cent of the whole--	53, 238, 192
Operating expenses divided on train mileage revenue, as above----	29, 058, 719
Net earnings -----	24, 179, 473
Or net earnings per mile-----	3, 335
Mileage of entire lines operating in Minnesota-----	45, 478
Miles of road in Minnesota -----	7, 250
Mileage of entire lines operating in Iowa-----	42, 541
Miles of road in Iowa -----	9, 496
Train revenue mileage entire lines operating in Minnesota-----	173, 081, 648
Train revenue mileage in Minnesota proper-----	25, 088, 827
Train revenue mileage entire lines operating in Iowa-----	182, 908, 611
Train revenue mileage in Iowa proper-----	34, 659, 884
Percentage of revenue train mileage in Minnesota to the entire lines--	14. 50
Percentage of revenue train mileage in Iowa to the entire lines----	18. 95
Total gross earnings for Minnesota, entire lines-----	\$338, 235, 018
Operating expenses, Minnesota, entire lines-----	\$200, 406, 703
Total gross earnings for Iowa, entire lines -----	\$321, 590, 372
Operating expenses, Iowa, entire lines-----	\$204, 165, 516

The above information is taken from the annual reports of Minnesota and Iowa for the fiscal year ending June 30, 1903.

Mr. STAPLES, of Minnesota. I offer the following resolution, based on the foregoing paper of Mr. Yapp:

*Resolved*, That in view of the fact that the capitalization, gross earnings, operating expenses, and other items by state lines for state reports are not all reported uniformly by the railroad companies, based on the divisions as required in resolution adopted at the seventh annual convention of the National Association of Railway Commissioners, that the matter be again referred to the committee on railroad

statistics with instructions to report at the next annual convention the best method of dividing the above items referred to by state lines.

Mr. KILPATRICK, of Illinois. I move the adoption of the resolution. The motion was carried and the resolution adopted.

Mr. STAPLES of Minnesota. I offer the following resolution:

*Resolved*, That the committee on resolutions of thanks be empowered to adopt such resolutions as they deem wise and prudent and transmit them to the secretary of this association to be incorporated in the records of the convention.

I trust that every member will understand that does not pertain to such business matters as might be discussed, but only to necessary resolutions of thanks.

The resolution was adopted.

Mr. MORGARIDGE, of Pennsylvania. I move that we adjourn sine die.

The motion was agreed to, and at 1.15 o'clock p. m. the convention adjourned sine die.

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#### REPORT OF THE COMMITTEE ON RESOLUTIONS OF THANKS.

The committee on resolutions of thanks subsequently filed the following report:

The thanks of the national association are due and are hereby given to the president, Hon. Ira B. Mills, of Minnesota, for the efficient and eminently fair manner in which he presided over the deliberations of the association, to the other officers of the association for their faithful services, and to Mr. H. B. Meyers, of Chicago, who gave such able assistance in transacting the business of the association.

The thanks of the association are due and are hereby extended as follows:

To the citizens of Deadwood for their hospitality and their cultured entertainment given to the members of the association and their invited guests, especially for the delightful reception given at the Franklin Hotel.

To Hon. S. H. Elrod, governor of South Dakota, and his estimable wife for the many kindnesses and courtesies extended to the members of the association during their stay in the industrial and progressive state of South Dakota.

To Governor Toole, of Montana, for the kindnesses and courtesies extended to the members of the association in their visit to the capital of that state. Congratulations are also extended to Governor Toole and the good people of Montana on account of the splendid capitol of the state, which reflects credit alike on the administration of the affairs of the state and on all who were instrumental in the construction and furnishing of the same.

To the citizens of Hot Springs and to the ladies and gentlemen of the Hot Springs Hotel, all of whom contributed in every way possible to the comforts and enjoyments of the members of the association and their guests during their stay at that beautiful summer resort.

To the chamber of commerce of Spokane for their fraternal greetings and hospitable entertainment, and to the managers of the street-railway company of Spokane for the courtesies extended by their company in so completely

exhibiting to the entire party from the cars of their well-equipped railway the modern, progressive, and beautiful city of Spokane.

To the boards of commerce of the cities of Seattle and Tacoma and to the managements of the electric railways of these two intensely progressive cities of the Northwest for their greetings, their hospitalities, and their limitless kindnesses and courtesies; these commendable and cherished acts, together with the courage, the skill, and perseverance of the citizens of these cities, give assurance that the great prosperity which will be given to the whole nation in the vast trade that will come in the opening of the orient commercially will be largely shared and enjoyed, and justly so, by the people of these two rapidly advancing municipalities.

To the managements of the electric railway of Mount Tamalpais and of the electric railways of San Francisco for the many courtesies extended to the members of the association during their visit to San Francisco.

For the courtesies enjoyed and for the uniform kindnesses shown by the railway officers, clerks, and employees during the entire trip from Chicago to the Yosemite and return, the thanks of the association are offered to the following-named railway corporations: The Chicago and Northwestern Railway Company, the Chicago, Burlington and Quincy Railway Company, the Northern Pacific Railway Company, the Great Northern Railway Company, the Southern Pacific Railway Company, the Oregon Railroad and Navigation Company, and the Denver and Rio Grande Railway Company.

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